

PAGE: 1 of 17      EASE  
Ohnstad Twichell, P.C.  
Recorded Electronically

1564477  
6/18/2019 8:30 AM  
\$65.00

RECORDER'S OFFICE, CASS COUNTY, ND  
I CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD THIS DATE.  
DEBORAH A. MOELLER, COUNTY RECORDER

by Teresa A. Kirby, Dep. **1564477**  
Recorded Electronically



## PERMANENT EASEMENT AGREEMENT

**THIS AGREEMENT** is made and entered into this 17<sup>th</sup> day of June, 2019, by and between Southeast Cass Water Resource District, a North Dakota political subdivision, whose address is 1201 Main Avenue West, West Fargo, North Dakota 58078 (the "District"); and Cub Creek Development LLC, a North Dakota limited liability company, whose address is 5522 36th Street South, Fargo, North Dakota 58104 (the "Developer").

### RECITALS

**WHEREAS**, the District owns, operates, and maintains Cass County Drain No. 27, a legal assessment drain under Chapter 61-16.1 of the North Dakota Century Code ("Drain 27"); a portion of Drain 27 lies within the City of Horace's (the "City") municipal boundaries.

**WHEREAS**, the Developer owns property in the East Half of Section 17, Township 138 North, Range 49 West, adjacent to Drain 27, and seeks to develop and plat the property as a residential development known as "Cub Creek First Addition to the City of Horace" (the "Development"); the City is currently considering the Developer's proposed plat for the Development (the "Plat").

**WHEREAS**, the City's approval of the Plat will include a condition that the District approve the Plat due to the Development's close proximity to Drain 27.

**WHEREAS**, the District owns certain easement rights regarding Drain 27, and the Plat includes a dedication to the District regarding Drain 27; more specifically, the Plat includes a 150-foot drainage easement setback along both sides of Drain 27 in Cass County, North Dakota, as required under City of Horace Ordinance § 17.8.7; the 150-foot setback on both sides of Drain 27 is legally described as follows:

See attached **Exhibit A**.

The property described above is the "Easement Property." A copy of a survey of the Easement Property is also attached as **Exhibit A** (the "Survey").

**WHEREAS**, the 150-foot setback area on either side of Drain 27 is the Easement Property, as depicted in the Survey. In addition, the Survey depicts the outermost 20 feet of the Easement Property on both sides of Drain 27 as a "20' Limited Use Area," legally described as follows:

See attached **Exhibit B**.

The property described above is the "Limited Use Area." This Agreement provides Developer's permissible uses of both the Easement Area and the Limited Use Area.

**WHEREAS**, the parties desire to enter into this Agreement for purposes of providing notice of record of the existence of this Agreement; the interests and rights of the District regarding the Easement Property; and the limitations regarding other parties' uses of the Easement Property.

In consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

#### **AGREEMENT**

1. **Dedication.** Subject to the terms and conditions in this Agreement, and in accordance with City of Horace Ordinance § 17.8.7, the City's approval of the Plat will include an easement dedication in favor of the District regarding the Easement Property. The Plat will specifically identify this Agreement in the dedication on the Plat by referencing the Cass County Recorder Office's document number for this Agreement. The Developer grants and conveys to the District a permanent easement, including the easement rights described in this Agreement, in, on, over, under, across, and through the Easement Property.
2. **Easement Rights.** The District, the District's officers, employees, agents, representatives, and contractors, will have, enjoy, and retain a perpetual easement in, on, over, under, across, and through the Easement Property for the following purposes: constructing, cleaning, inspecting, reconstructing, modifying, operating, maintaining, repairing, and improving Drain 27 and related appurtenances, including a channel and side slopes with containment berms, and other improvements; excavating, piling, storing, depositing, spoiling, spreading, and removing excavated dirt, soil, clay, silt, and other materials; moving, storing, and removing equipment, materials, and supplies; removing trees, underbrush, obstructions, and any other vegetation, structures, fixtures, or obstacles from the Easement Property; and the right to perform any other work necessary and incident to the construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 27, together with all necessary and reasonable rights of ingress and egress to and from the Easement Property.

3. **Underlying and Adjacent Ownership.** In accordance with the terms of this Agreement, the Developer will initially own the Development and the Easement Property subject to the terms of this Agreement and subject to the District's rights regarding the Easement Property. The Developer may sell, convey, or transfer ownership of any portion of the Development and the Easement Property to subsequent owners, all subject to the terms of this Agreement and subject to the District's rights regarding the Easement Property.
4. **Developer's Use of the Easement Property.** The Developer, its successors and assigns have the right and privilege to use the Easement Property at any time, in any manner, and for any purpose that is not inconsistent with the District's rights and privileges under this Agreement, subject to the use limitations described in this Agreement. The Developer will not use, or permit use of, the Easement Property in any manner that disrupts or interferes with the District's use of the Easement Property, the District's rights and privileges under this Agreement, or with Drain 27 as long as Developer owns property affected by this Easement. Upon conveyance of any part of the Easement Property the successor in interest will have the rights, privileges and obligations relating to the conveyed Easement Property. The Developer or its successors and assigns will promptly cease any activities and remove any structures, fixtures, or obstructions that interfere with the District's use of the Easement Property, the District's rights and privileges under this Agreement, or with Drain 27, when directed by the District, at the Developer's sole cost or the cost of the successor in interest of the affected Easement Property. The Developer will repair or replace any of the District's structures, facilities, right of way, or any other property owned by the District damaged by the Developer or as a result of the Developer's use of the Easement Property, at the Developer's sole cost. If the Developer fails to repair any damages resulting from Developer's use of the Easement Property, the District may repair any damages caused by the Developer and may assess all costs incurred against any of the Developer's real property in Cass County, North Dakota, or may otherwise collect the District's costs incurred from the Developer.
  - A) **Permissible Uses and Limitations regarding the Easement Property.** The Developer's use of the Easement Property is further limited as follows:
    - i. The Developer may plant, grow, and maintain grass and light vegetation on the Easement Property, but only to the extent the Developer's use does not disrupt or interfere with the District's use of the Easement Property, the District's rights and privileges under this Agreement, or with Drain 27.
    - ii. The Developer will not install, plant, construct, erect, or maintain any trees, shrubs, fences, sprinkler systems, fixtures, utilities, improvements, or other structures in, on, over, under, across, or through any portion of the Easement Property without first obtaining the District's consent.
    - iii. For any Easement Property owned by Developer, the Developer will not consent to, allow, or permit installation, planting, construction, erection, or maintenance of any trees, shrubs, fences, sprinkler systems, fixtures, utilities, improvements, or

other structures in, on, over, under, across, or through any portion of the Easement Property without first obtaining the District's consent.

- iv. The Developer will not otherwise disturb, injure, impair, alter, or in any manner interfere with the Easement Property, the District's rights under this Agreement, the District's use of the Easement Property, or Drain 27 or any related appurtenances.
- v. The District may remove or relocate, and will not be responsible for any damages to, any grass, trees, shrubs, other vegetation, fences, sprinkler systems, fixtures, utilities, improvements, or other structures in, on, over, under, across, or through any portion of the Easement Property as a result of the District's rights under this Agreement, or otherwise as necessary to protect and ensure the integrity of Drain 27.

**B) Permissible Uses and Limitations regarding the Limited Use Area:** References to the Easement Property in this Agreement include the Limited Use Area, with the exception of the Developer's permissible and limited uses of the Limited Use Area as follows:

- i. The Developer, its successors and assigns may plant, grow, and maintain grass and light vegetation on the Limited Use Area, but only to the extent the Developer's use does not disrupt or interfere with the District's use of the Limited Use Area, the District's rights and privileges under this Agreement, or with Drain 27.
- ii. The Developer, its successors and assigns will not install, construct, erect, or maintain any sprinkler systems or other utilities in, on, over, under, across, or through any portion of the Limited Use Area without first obtaining the consent of both the District and the City.
- iii. The Developer, its successors and assigns may install, construct, plant, erect, and maintain trees, shrubs, gardens, decks, garden sheds, fences, and other minor fixtures, improvements, or other structures on the Limited Use Area, but only to the extent the Developer's use does not disrupt or interfere with the District's use of the Limited Use Area, the District's rights and privileges under this Agreement, or with Drain 27, and only to the extent approved or permitted by the City.
- iv. The Developer will not otherwise disturb, injure, impair, alter, or in any manner interfere with the Limited Use Area, the District's rights under this Agreement, the District's use of the Limited Use Area, or Drain 27 or any related appurtenances.
- v. The District may remove or relocate, and will not be responsible for any damages to, any grass, trees, shrubs, gardens, other vegetation, decks, garden sheds, fences, sprinkler systems, fixtures, utilities, improvements, or other structures in, on, over, under, across, or through any portion of the Limited Use Area as a result of

the District's rights under this Agreement, or otherwise as necessary to protect and ensure the integrity of Drain 27.

5. **Drain Priority.** The parties understand and agree the District's use of the Easement Property for purposes of owning, operating, and maintaining Drain 27, as a public facility that provides drainage and flood protection benefits, takes priority over any other use of the Easement Property. The District has not made any warranty, express or implied, that the Easement Property is now, or will be in the future, suitable for the Developer's use, or regarding the condition of the Easement Property, nor has the District made any other representations, warranties, or promises regarding the Easement Property. The District will use reasonable care regarding the District's activities to avoid any disruptions of the Developer's use of the Easement Property; however, the District will not be liable or responsible for any damages to the Easement Property or to any of the Developer's property on the Easement Property resulting from the District's use of the Easement Property, including any construction, cleaning, inspection, reconstruction, modification, operation, maintenance, repair, or improvement of Drain 27.
6. **Future Conveyances.** The parties understand and agree any and all of the Developer's heirs, successors, assigns, and all subsequent purchasers of any of the Easement Property will own the Easement Property subject to this Agreement, subject to the District's rights regarding the Easement Property, and subject to the Developer's rights and obligations under this Agreement. Any reference to the Developer in this Agreement includes the Developer's heirs, successors, assigns, and subsequent purchasers, including all future owners of any portion of the Easement Property.
7. **Easement Runs With the Properties.** This Agreement, and all covenants, terms, conditions, provisions, obligations, responsibilities, and undertakings created under this Agreement, are perpetual and will run with both the Easement Property and the Development, and will be binding upon the parties' heirs, successors, assigns, and subsequent purchasers.
8. **Developer Covenants.** The Developer warrants that the Developer is the fee simple owner of the Easement Property; that the Developer has the right to execute this Agreement and to make the promises, covenants, and representations contained in this Agreement; that this Agreement does not violate any mortgage or other interest held by any third party regarding the Easement Property, or any portion of the Easement Property; that there are no outstanding unpaid bills incurred for labor, materials, or services regarding the Easement Property, or any portion of the Easement Property; and that there are no recorded or unrecorded liens, security interests, or any outstanding, pending, or threatened suits, judgments, executions, bankruptcies, or other proceedings pending or of record that would in any manner impact title to the Easement Property, or any portion of the Easement Property. The Developer will release, hold harmless, defend, and indemnify the District and its officers, agents, representatives, employees, and contractors from and against any and all claims, damages, injuries, or costs arising out of or in any way related to any title defects regarding the Easement Property.

9. **Remedies.** The Developer is solely responsible for the costs of any damages to the Easement Property or Drain 27, and any of the District's other structures, facilities, right of way, or any other property owned by the District, arising out of or as a result of any entry upon or use of the Easement Property by the Developer or by any of the Developer's licensees, invitees, agents, representatives, or contractors. If the Developer damages any portion of the Easement Property or Drain 27, or any of the District's other structures, facilities, right of way, or any other property owned by the District; if the Developer installs, plants, constructs, erects, or maintains any trees, shrubs, fences, sprinkler systems, fixtures, utilities, improvements, or other structures on the Easement Property in violation of this Agreement; or if the Developer otherwise violates the terms of this Agreement and does not remedy the Developer's violation within a reasonable amount of time, the District may remedy any of the Developer's defaults or violations and may assess the District's costs incurred against any of the Developer's real property in Cass County, North Dakota, or may otherwise collect the District's costs incurred from the Developer. The District will be entitled to collect from the Developer all reasonable costs and expenses incurred in enforcing the terms of this Agreement or remedying any of the Developer's defaults or violations, including reasonable attorneys' fees. The remedies provided in this Agreement are cumulative and not exclusive, and are in addition to any and all other remedies available to the District under North Dakota law. This provision will apply to any successors and assigns of a part of the Easement Property to the extent of a violation by the successor or assign of this Agreement as it related to Easement Property owned by that successor or assign.
10. **Taxes and Special Assessments.** The Developer, and all subsequent owners of any portion of the Development or Easement Property, is solely responsible for all taxes and special assessments or assessments for special improvements due, levied, or assessed regarding the Development and the Easement Property for all past, present, and future years. The Developer's obligations to pay taxes and special assessments will terminate regarding any particular lot or portion of the Development or the Easement Property upon conveyance of that particular lot or portion to a subsequent owner. The District will not be responsible for payment of any real estate taxes or special assessments regarding the Development or Easement Property.
11. **Encumbrances.** The Developer will not encumber the Easement Property in any manner that would be contrary to, or would in any way disrupt or interfere with, the District's use of the Easement Property, the District's rights and privileges under this Agreement, or with Drain 27, without first obtaining the District's consent. However, the Developer may lease the Easement Property, at the Developer's sole discretion and without first obtaining the District's consent. If the Developer rents or leases the Easement Property, any lessee's rights and uses are subject to this Agreement, including the use restrictions described above; the Developer will be fully responsible to the District for the Developer's obligations under this Agreement, including for any violations by any lessee.
12. **General Maintenance.** The District will not be responsible for mowing, haying, manicuring, or otherwise maintaining those portions of the Easement Property not utilized for purposes of the Drain 27 channel.

13. **Severability.** If any Court of competent jurisdiction declares any provision or part of this Agreement invalid or unenforceable, all remaining provisions and parts of this Agreement will remain binding and enforceable; however, the parties will reconvene negotiations and will reform or replace any invalid, illegal, or unenforceable provision or part of this Agreement with an alternative provision or part that is enforceable and bears as close resemblance as possible to any provision or part determined invalid, illegal, or unenforceable.
14. **Applicable Law.** This Agreement will be construed in accordance with and governed by North Dakota law. Any litigation arising out of this Agreement, or in any way regarding Drain 27 or the Easement Property, will be venued in District Court in Cass County, North Dakota, and the parties waive any objection to venue or personal jurisdiction.
15. **Amendments.** Any modifications or amendments of this Agreement must be in writing and signed by both parties to this Agreement, or those parties' successors and assigns, and must be recorded in the Cass County Recorder's office.
16. **Assignment.** The Developer may not transfer or assign this Agreement or any rights or obligations to another developer or builder without the express written consent of the District. As noted in this Agreement, the Developer may sell, convey, or transfer ownership of any lot or portion of the Development or Easement Property to subsequent owners or purchasers, and without the necessity for any consent or assignment; all subsequent owners of any portion of the Development or Easement Property are subject to this Agreement, and all covenants, terms, conditions, provisions, obligations, responsibilities, and undertakings created under this Agreement.
17. **Headings.** Headings in this Agreement are for convenience only and will not be used to interpret or construe its provisions.
18. **Forbearance or Waiver.** The failure or delay of the District to insist on the timely performance of any of the terms of this Agreement, or the waiver of any particular breach of any of the terms of this Agreement, at any time, will not be construed as a continuing waiver of those terms or any subsequent breach, and all terms will continue and remain in full force and effect as if no forbearance or waiver had occurred.
19. **Entire Agreement.** This Agreement, together with any amendments, constitutes the entire agreement between the parties regarding the matters described in this Agreement, and this Agreement supersedes all other previous oral or written agreements between the parties.
20. **Binding Effect.** The covenants, terms, conditions, provisions, and undertakings in this Agreement, or in any effective amendment, will be binding upon the parties' successors, permissible assigns, heirs, executors, administrators, and legal representatives, including subsequent owners of any portion of the Easement Property.

21. **Representation.** The parties, having been represented by counsel or having waived the right to counsel, have carefully read and understand the contents of this Agreement, and agree they have not been influenced by any representations or statements made by any other parties.

*[Signatures appear on the following pages.]*

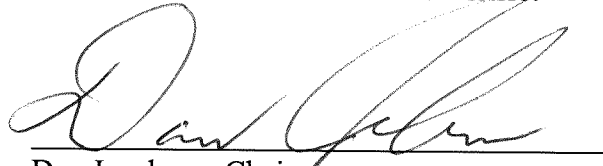


***Permanent Easement Agreement  
Southeast Cass Water Resource District  
Cub Creek First Addition***

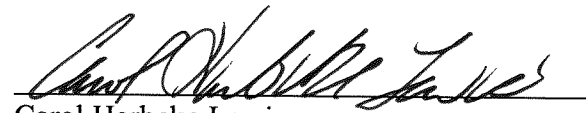
***Page 9***

**DISTRICT:**

Southeast Cass Water Resource District

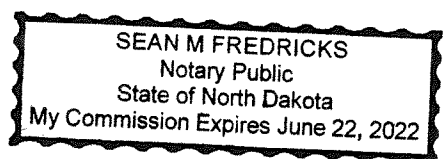
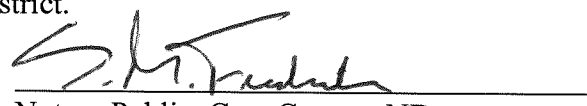
  
\_\_\_\_\_  
Dan Jacobson, Chair

**ATTEST:**

  
\_\_\_\_\_  
Carol Harbeke Lewis  
Secretary-Treasurer

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS                    )

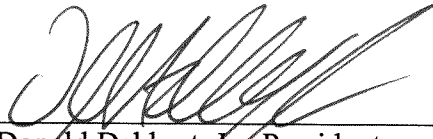
On this 11<sup>th</sup> day of JUNE, 2019, before me, a Notary Public in and for said County and State, personally appeared Dan Jacobson and Carol Harbeke Lewis, known to me to be the Chair and Secretary-Treasurer, respectively, of the Southeast Cass Water Resource District, and who executed the foregoing instrument and acknowledged to me that they executed the same on behalf of the Southeast Cass Water Resource District.

(SEAL)    
Notary Public, Cass County, ND

***Permanent Easement Agreement  
Southeast Cass Water Resource District  
Cub Creek First Addition***

***Page 10***

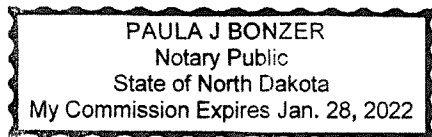
**DEVELOPER:**  
Cub Creek Development LLC

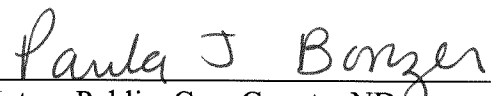
  
\_\_\_\_\_  
Donald Dabbert, Jr., President

STATE OF NORTH DAKOTA     )  
  ) ss.  
COUNTY OF CASS                     )

On this 17<sup>th</sup> day of June, 2019, before me, a Notary Public in and for said County and State, personally appeared Donald Dabbert, Jr., known to me to be the President of Cub Creek Development LLC, a North Dakota limited liability company, and who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of Cub Creek Development LLC.

(SEAL)



  
\_\_\_\_\_  
Notary Public, Cass County, ND

The legal descriptions contained in this document were prepared by:

Shawn M. Thomasson, LS-5900  
Moore Engineering, Inc.  
925 Tenth Avenue East  
West Fargo, ND 58078-5211  
TEL (701) 282-4692  
FAX (701) 282-4530

**EXHIBIT A**

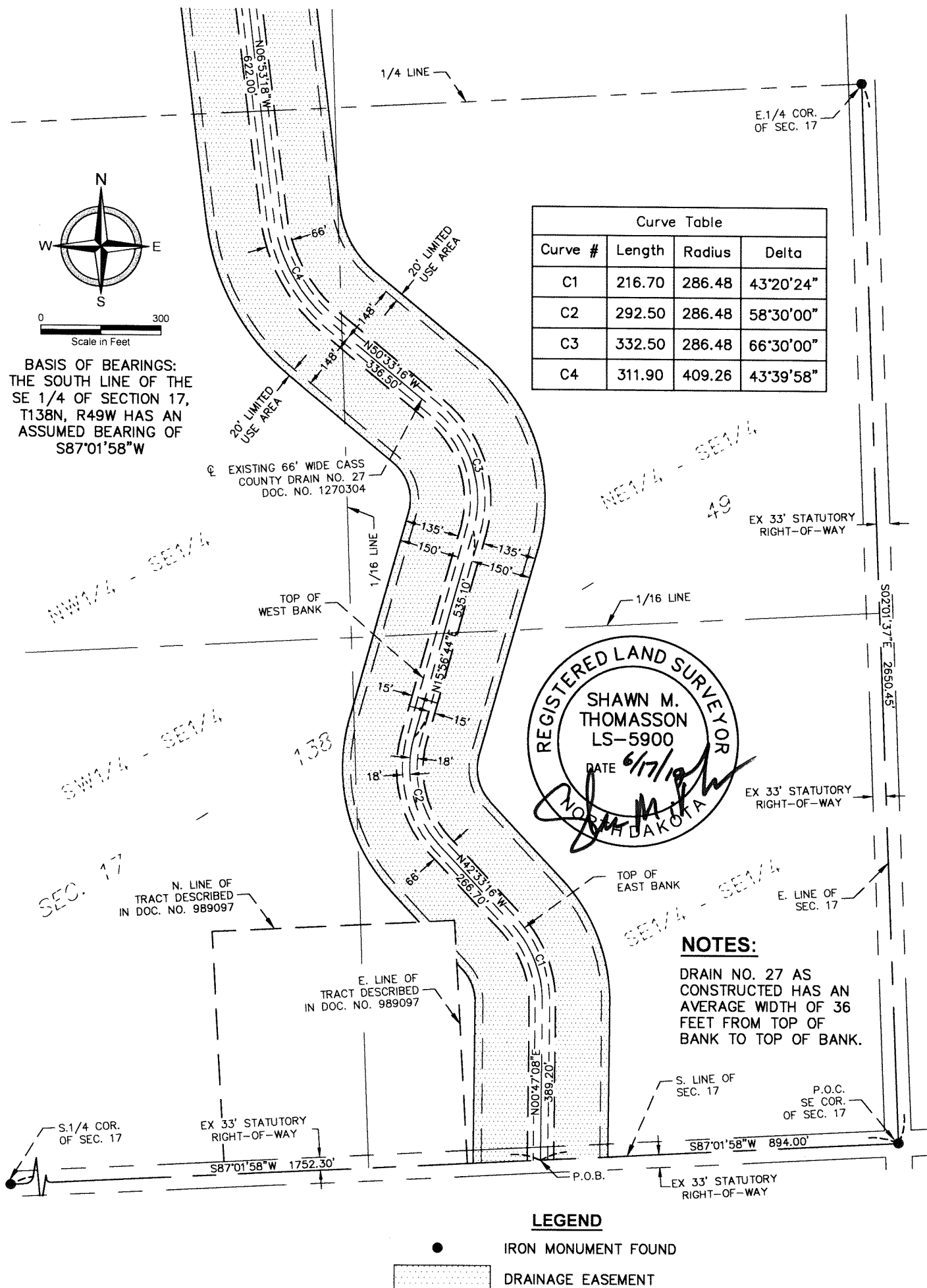
**LEGAL DESCRIPTION AND SURVEY OF THE EASEMENT PROPERTY**

That part of the East Half of Section 17, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being two strips, each 135.00 feet wide, lying between lines drawn 33.00 feet and 168.00 feet right of and 33.00 feet and 168.00 feet left of, as measured at a right angle to and parallel with, a line described as follows:

Commencing at a found iron monument which designates the southeast corner of said Section 17; thence South 87 degrees 01 minute 58 seconds West on an assumed bearing along the south line of the East Half of said Section 17 for a distance of 894.00 feet to the point of beginning of said line; thence North 00 degrees 47 minutes 08 seconds East for a distance of 389.20 feet; thence northwesterly along a tangential curve concave to the southwest, having a radius of 286.48 feet and a central angle of 43 degrees 20 minutes 24 seconds for an arc distance of 216.70 feet; thence North 42 degrees 33 minutes 16 seconds West for a distance of 266.70 feet; thence northerly along a tangential curve concave to the east, having a radius of 286.48 feet and a central angle of 58 degrees 30 minutes 00 seconds for an arc distance of 292.50 feet; thence North 15 degrees 56 minutes 44 seconds East for a distance of 535.10 feet; thence northerly along a tangential curve concave to the west, having a radius of 286.48 feet and a central angle of 66 degrees 30 minutes 00 seconds for an arc distance of 332.50 feet; thence North 50 degrees 33 minutes 16 seconds West for a distance of 336.50 feet; thence northwesterly along a tangential curve concave to the northeast, having a radius of 409.26 feet and a central angle of 43 degrees 39 minutes 58 seconds for an arc distance of 311.90 feet; thence North 06 degrees 53 minutes 18 seconds West for a distance of 622.00 feet; thence northerly along a tangential curve concave to the west, having a radius of 572.96 feet and a central angle of 08 degrees 00 minutes 00 seconds for an arc distance of 80.00 feet; thence North 14 degrees 53 minutes 18 seconds West for a distance of 310.00 feet; thence northerly along a tangential curve concave to the east, having a radius of 572.96 feet and a central angle of 10 degrees 00 minutes 00 seconds for an arc distance of 100.00 feet; thence North 04 degrees 53 minutes 18 seconds West for a distance of 144.80 feet; thence northeasterly along a tangential curve concave to the southeast, having a radius of 477.47 feet and a central angle of 51 degrees 30 minutes 14 seconds for an arc distance of 429.20 feet; thence North 46 degrees 36 minutes 56 seconds East for a distance of 996.40 feet; thence northerly along a tangential curve concave to the west, having a radius of 358.10 feet and a central angle of 47 degrees 00 minutes 29 seconds for an arc distance of 293.80 feet; thence North 00 degrees 23 minutes 33 seconds West for a distance of 387.32 feet to a point on the north line of said Section 17, said line there terminates, said point lies South 86 degrees 51 minutes 07 seconds West a distance of 591.00 feet from a found iron monument at the northeast corner of said Section 17 as measured along the north line of said Section. The sidelines of said 150.00 foot wide strip lying to the right of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17. The sidelines of said 150.00 foot wide strip lying to the left of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17 and the north and east lines of a tract described in Document No. 989097 on file and of record in the Office of the Recorder, said Cass County.

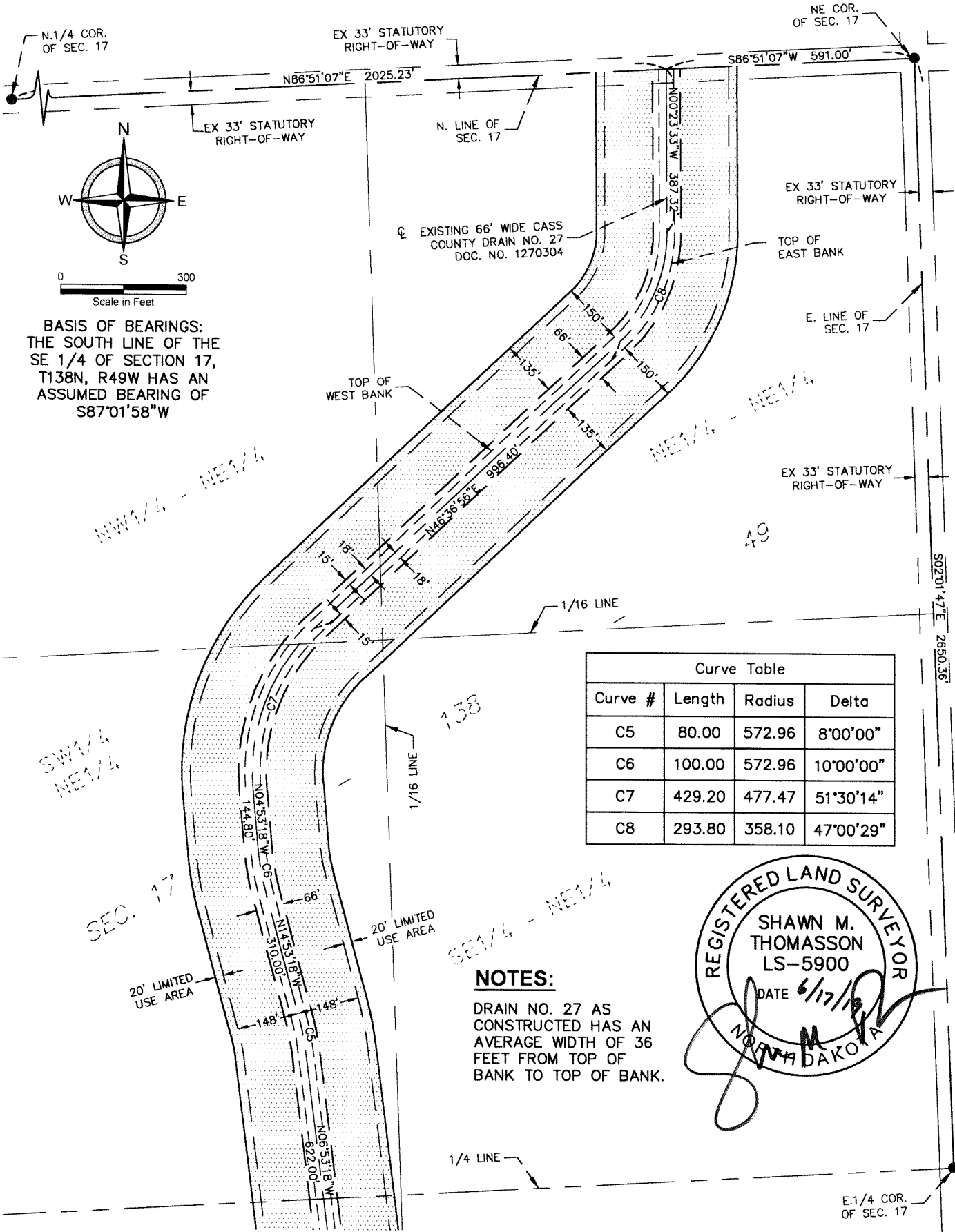
The above described tract contains 37.36 acres, more or less and is subject to all easements, reservations, restrictions and rights of way of record, if any.

PART OF THE EAST HALF OF SECTION 17, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH  
PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



EASEMENT EXHIBIT

PART OF THE EAST HALF OF SECTION 17, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA



LEGEND

- IRON MONUMENT FOUND
- DRAINAGE EASEMENT

EASEMENT EXHIBIT

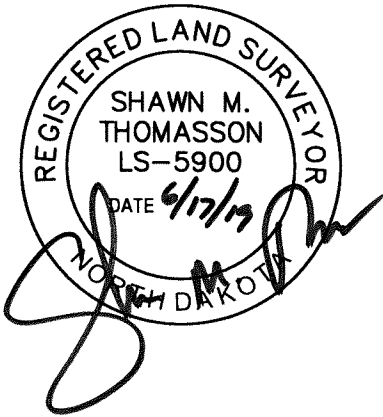
PART OF THE EAST HALF OF SECTION 17, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION - DRAINAGE EASEMENT

That part of the East Half of Section 17, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being two strips, each 135.00 feet wide, lying between lines drawn 33.00 feet and 168.00 feet right of and 33.00 feet and 168.00 feet left of, as measured at a right angle to and parallel with, a line described as follows:

Commencing at a found iron monument which designates the southeast corner of said Section 17; thence South 87 degrees 01 minute 58 seconds West on an assumed bearing along the south line of the East Half of said Section 17 for a distance of 894.00 feet to the point of beginning of said line; thence North 00 degrees 47 minutes 08 seconds East for a distance of 389.20 feet; thence northwesterly along a tangential curve concave to the southwest, having a radius of 286.48 feet and a central angle of 43 degrees 20 minutes 24 seconds for an arc distance of 216.70 feet; thence North 42 degrees 33 minutes 16 seconds West for a distance of 266.70 feet; thence northerly along a tangential curve concave to the east, having a radius of 286.48 feet and a central angle of 58 degrees 30 minutes 00 seconds for an arc distance of 292.50 feet; thence North 15 degrees 56 minutes 44 seconds East for a distance of 535.10 feet; thence northerly along a tangential curve concave to the west, having a radius of 286.48 feet and a central angle of 66 degrees 30 minutes 00 seconds for an arc distance of 332.50 feet; thence North 50 degrees 33 minutes 16 seconds West for a distance of 336.50 feet; thence northwesterly along a tangential curve concave to the northeast, having a radius of 409.26 feet and a central angle of 43 degrees 39 minutes 58 seconds for an arc distance of 311.90 feet; thence North 06 degrees 53 minutes 18 seconds West for a distance of 622.00 feet; thence northerly along a tangential curve concave to the west, having a radius of 572.96 feet and a central angle of 08 degrees 00 minutes 00 seconds for an arc distance of 80.00 feet; thence North 14 degrees 53 minutes 18 seconds West for a distance of 310.00 feet; thence northerly along a tangential curve concave to the east, having a radius of 572.96 feet and a central angle of 10 degrees 00 minutes 00 seconds for an arc distance of 100.00 feet; thence North 04 degrees 53 minutes 18 seconds West for a distance of 144.80 feet; thence northeasterly along a tangential curve concave to the southeast, having a radius of 477.47 feet and a central angle of 51 degrees 30 minutes 14 seconds for an arc distance of 429.20 feet; thence North 46 degrees 36 minutes 56 seconds East for a distance of 996.40 feet; thence northerly along a tangential curve concave to the west, having a radius of 358.10 feet and a central angle of 47 degrees 00 minutes 29 seconds for an arc distance of 293.80 feet; thence North 00 degrees 23 minutes 33 seconds West for a distance of 387.32 feet to a point on the north line of said Section 17, said line there terminates, said point lies South 86 degrees 51 minutes 07 seconds West a distance of 591.00 feet from a found iron monument at the northeast corner of said Section 17 as measured along the north line of said Section. The sidelines of said 150.00 foot wide strip lying to the right of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17. The sidelines of said 150.00 foot wide strip lying to the left of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17 and the north and east lines of a tract described in Document No. 989097 on file and of record in the Office of the Recorder, said Cass County.

The above described tract contains 37.36 acres, more or less and is subject to all easements, reservations, restrictions and rights of way of record, if any.



EASEMENT EXHIBIT

PART OF THE EAST HALF OF SECTION 17, TOWNSHIP 138 NORTH, RANGE 49 WEST OF THE FIFTH PRINCIPAL MERIDIAN, CASS COUNTY, NORTH DAKOTA

DESCRIPTION - LIMITED USE AREA

That part of the East Half of Section 17, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being two strips, each 20.00 feet wide, lying between lines drawn 148.00 feet and 168.00 feet right of and 148.00 feet and 168.00 feet left of, as measured at a right angle to and parallel with, a line described as follows:

Commencing at a found iron monument which designates the southeast corner of said Section 17; thence South 87 degrees 01 minute 58 seconds West on an assumed bearing along the south line of the East Half of said Section 17 for a distance of 894.00 feet to the point of beginning of said line; thence North 00 degrees 47 minutes 08 seconds East for a distance of 389.20 feet; thence northwesterly along a tangential curve concave to the southwest, having a radius of 286.48 feet and a central angle of 43 degrees 20 minutes 24 seconds for an arc distance of 216.70 feet; thence North 42 degrees 33 minutes 16 seconds West for a distance of 266.70 feet; thence northerly along a tangential curve concave to the east, having a radius of 286.48 feet and a central angle of 58 degrees 30 minutes 00 seconds for an arc distance of 292.50 feet; thence North 15 degrees 56 minutes 44 seconds East for a distance of 535.10 feet; thence northerly along a tangential curve concave to the west, having a radius of 286.48 feet and a central angle of 66 degrees 30 minutes 00 seconds for an arc distance of 332.50 feet; thence North 50 degrees 33 minutes 16 seconds West for a distance of 336.50 feet; thence northwesterly along a tangential curve concave to the northeast, having a radius of 409.26 feet and a central angle of 43 degrees 39 minutes 58 seconds for an arc distance of 311.90 feet; thence North 06 degrees 53 minutes 18 seconds West for a distance of 622.00 feet; thence northerly along a tangential curve concave to the west, having a radius of 572.96 feet and a central angle of 08 degrees 00 minutes 00 seconds for an arc distance of 80.00 feet; thence North 14 degrees 53 minutes 18 seconds West for a distance of 310.00 feet; thence northerly along a tangential curve concave to the east, having a radius of 572.96 feet and a central angle of 10 degrees 00 minutes 00 seconds for an arc distance of 100.00 feet; thence North 04 degrees 53 minutes 18 seconds West for a distance of 144.80 feet; thence northeasterly along a tangential curve concave to the southeast, having a radius of 477.47 feet and a central angle of 51 degrees 30 minutes 14 seconds for an arc distance of 429.20 feet; thence North 46 degrees 36 minutes 56 seconds East for a distance of 996.40 feet; thence northerly along a tangential curve concave to the west, having a radius of 358.10 feet and a central angle of 47 degrees 00 minutes 29 seconds for an arc distance of 293.80 feet; thence North 00 degrees 23 minutes 33 seconds West for a distance of 387.32 feet to a point on the north line of said Section 17, said line there terminates, said point lies South 86 degrees 51 minutes 07 seconds West a distance of 591.00 feet from a found iron monument at the northeast corner of said Section 17 as measured along the north line of said Section. The sidelines of said 20.00 foot wide strip lying to the right of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17. The sidelines of said 20.00 foot wide strip lying to the left of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17 and the north and east lines of a tract described in Document No. 989097 on file and of record in the Office of the Recorder, said Cass County.

The above described tract contains 5.50 acres, more or less and is subject to all easements, reservations, restrictions and rights of way of record, if any.

CERTIFICATION

I hereby certify that this survey, plan, or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of North Dakota.

Shawn M. Thomasson, R.L.S.  
N.D. License No. LS-5900

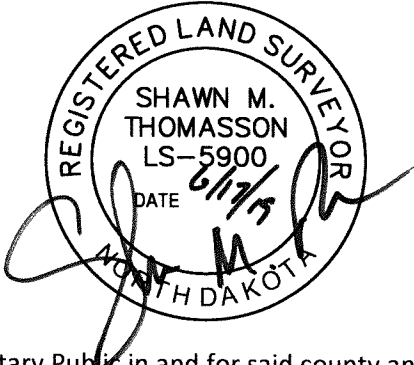
Date: 6-17-19

State of North Dakota)  
County of Cass )

On this 17<sup>th</sup> day of June, 2019, before me, a Notary Public in and for said county and state, personally appeared Shawn M. Thomasson, Registered Land Surveyor, known to me to be the person described in and who executed the foregoing certificate and acknowledged to me that he executed the same as his free act and deed.

BRENDA JO KOSKI  
Notary Public  
State of North Dakota  
My Commission Expires May 9, 2022

Brenda Jo Koski  
Notary Public, Cass County, North Dakota





**EXHIBIT B**

**LEGAL DESCRIPTION OF THE LIMITED USE AREA**

That part of the East Half of Section 17, Township 138 North, Range 49 West of the Fifth Principal Meridian, Cass County, North Dakota, being two strips, each 20.00 feet wide, lying between lines drawn 148.00 feet and 168.00 feet right of and 148.00 feet and 168.00 feet left of, as measured at a right angle to and parallel with, a line described as follows:

Commencing at a found iron monument which designates the southeast corner of said Section 17; thence South 87 degrees 01 minute 58 seconds West on an assumed bearing along the south line of the East Half of said Section 17 for a distance of 894.00 feet to the point of beginning of said line; thence North 00 degrees 47 minutes 08 seconds East for a distance of 389.20 feet; thence northwesterly along a tangential curve concave to the southwest, having a radius of 286.48 feet and a central angle of 43 degrees 20 minutes 24 seconds for an arc distance of 216.70 feet; thence North 42 degrees 33 minutes 16 seconds West for a distance of 266.70 feet; thence northerly along a tangential curve concave to the east, having a radius of 286.48 feet and a central angle of 58 degrees 30 minutes 00 seconds for an arc distance of 292.50 feet; thence North 15 degrees 56 minutes 44 seconds East for a distance of 535.10 feet; thence northerly along a tangential curve concave to the west, having a radius of 286.48 feet and a central angle of 66 degrees 30 minutes 00 seconds for an arc distance of 332.50 feet; thence North 50 degrees 33 minutes 16 seconds West for a distance of 336.50 feet; thence northwesterly along a tangential curve concave to the northeast, having a radius of 409.26 feet and a central angle of 43 degrees 39 minutes 58 seconds for an arc distance of 311.90 feet; thence North 06 degrees 53 minutes 18 seconds West for a distance of 622.00 feet; thence northerly along a tangential curve concave to the west, having a radius of 572.96 feet and a central angle of 08 degrees 00 minutes 00 seconds for an arc distance of 80.00 feet; thence North 14 degrees 53 minutes 18 seconds West for a distance of 310.00 feet; thence northerly along a tangential curve concave to the east, having a radius of 572.96 feet and a central angle of 10 degrees 00 minutes 00 seconds for an arc distance of 100.00 feet; thence North 04 degrees 53 minutes 18 seconds West for a distance of 144.80 feet; thence northeasterly along a tangential curve concave to the southeast, having a radius of 477.47 feet and a central angle of 51 degrees 30 minutes 14 seconds for an arc distance of 429.20 feet; thence North 46 degrees 36 minutes 56 seconds East for a distance of 996.40 feet; thence northerly along a tangential curve concave to the west, having a radius of 358.10 feet and a central angle of 47 degrees 00 minutes 29 seconds for an arc distance of 293.80 feet; thence North 00 degrees 23 minutes 33 seconds West for a distance of 387.32 feet to a point on the north line of said Section 17, said line there terminates, said point lies South 86 degrees 51 minutes 07 seconds West a distance of 591.00 feet from a found iron monument at the northeast corner of said Section 17 as measured along the north line of said Section. The sidelines of said 20.00 foot wide strip lying to the right of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17. The sidelines of said 20.00 foot wide strip lying to the left of said line shall be lengthened or shortened as necessary to terminate on the north and south lines of said Section 17 and the north and east lines of a tract described in Document No. 989097 on file and of record in the Office of the Recorder, said Cass County.

The above described tract contains 5.50 acres, more or less and is subject to all easements, reservations, restrictions and rights of way of record, if any.