

North Canton City Council  
Street and Alley Committee

Ordinance No. 23 - 2017

An ordinance approving, confirming and accepting a perpetual water main easement known as Parcel No. 10008509, and being part of a 0.0309 acre tract of land, by and between the City of North Canton, an Ohio charter municipal corporation ("City"), Grantee, and 3939 Everhard, LLC, Grantor, 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:

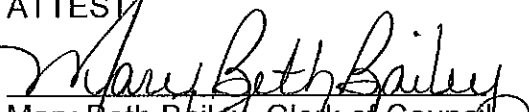
- Section 1. That a perpetual water main utility easement known as Parcel No. 10008509, by and between the City, and 3939 Everhard, LLC, be, and the same is hereby approved, confirmed and accepted.
- Section 2. That attachments regarding this easement more fully describing the parcel and easement are 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 City to have prompt access to the utility as well as sanitary sewer pipes and lines; 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.

Passed in Council this 27<sup>th</sup> day of February, 2017

  
David Held, Mayor

Signed: 3/01, 2017


ATTEST

  
Mary Beth Bailey, Clerk of Council

PS-90813  
1/11/2017 11:14:00 19NW 02 1400 10008509  
**EASEMENT ONLY**

STARK COUNTY AUDITOR  
FEE           P          

JAN 11 2017

  
Instr: 201701110001761  
P: 1 of 4 F: \$44.00 1/11/2017  
Rick Campbell 10:50 AM EASE  
Stark County Recorder T20170000968

TRANSFER APPROVED TNN  
DEPUTY NR  
IN COMPLIANCE WITH ORC 4503

**PERPETUAL WATER MAIN EASEMENT**

10008509  
Parcel No.: 10003338

For and in consideration of ONE DOLLAR (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, 3939 Everhard, LLC.; GRANTORS, do hereby give and grant unto THE CITY OF NORTH CANTON, an Ohio municipal corporation, GRANTEE, a perpetual easement to lay, relay, 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.

PS-90813

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. 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.
8. 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 16 day of NOVEMBER, 2016.

**GRANTOR(S):**

3939 Everhard, LLC.  
 By: DeVile Developments, LLC  
 Roger L. DeVille, Manager

*[Handwritten signature]*  
 \_\_\_\_\_  
 (Signed Name)

**NOTARY:**

STATE OF OHIO )  
 ) SS:  
 COUNTY OF Stark )

Before me, a Notary Public in and for said County, personally appeared Roger L. DeVille, Manager of DeVille Developments, LLC on behalf of 3939 Everhard, 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 16 Day of NOVEMBER, 2016.

*[Handwritten signature]*  
 Notary Public Suzanne L. Marcoguiseppe



Seal  
 SUZANNE L. MARCOGUISEPPE  
 Notary Public, State of Ohio  
 My Commission Expires  
 October 4, 2021

This instrument prepared by: City of North Canton  
 145 North Main Street  
 North Canton, OH 4720

# GBC DESIGN, INC.

565 White Pond Drive • Akron, OH 44320-1123 • Phone 330-836-0228 • Fax 330-836-5782 • www.GBCdesign.com

November 18, 2016

EXHIBIT "A"  
Legal Description  
3939 Everhard, LLC  
PPN 10003338  
Water Main Easement  
0.0309 Acres

Situated in the Township of Plain, County of Stark and the State of Ohio and known as being part of the Northwest Quarter of Section 19, also known as being part of lands now or formerly owned by 3939 Everhard, LLC. as recorded in Instrument No. 201408150031152 of the Stark County Records, and more fully described as follows:


Beginning at a 1" iron bar in a monument box (PLA-091) found at the northwesterly corner of the said Northwest Quarter of Section 19;

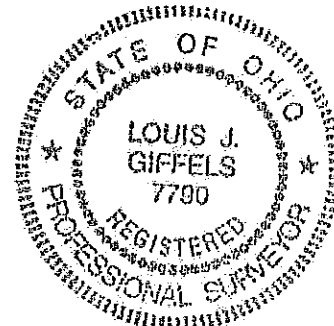
Thence S 04°50'00" W, along the centerline of said Whipple Ave. N.W. (a variable width right-of-way recorded in Road Record 6, Page 88 - 33' R/W - on December 30, 1878), also being the westerly line of said Northwest Quarter of Section 19, a distance of 365.07 feet to a point;

Thence S 89°59'40" E, along a southerly line of said 3939 Everhard, LLC. lands, a distance of 59.62 feet to a point, said point being the True Place of Beginning for the parcel of land herein described in the following six (6) courses:

1. Thence N 02°06'30" W, along the easterly line of said Whipple Ave. N.W., a distance 3.42 feet to a point;
2. Thence N 89°22'03" E, along a new easement line, a distance of 79.60 feet to a point;
3. Thence S 00°37'57" E, along a new easement line, a distance of 20.00 feet to a point;
4. Thence S 89°22'03" W, along a new easement line, a distance of 65.51 feet to a point;
5. N 04°50'00" E, along the easterly line of said Whipple Avenue N.W., also being the westerly line of said 3939 Everhard, LLC. lands, a distance of 16.48 feet to a point;
6. Thence N 89°59'40" W, along a southerly line of said 3939 Everhard, LLC. lands, a distance of 15.58 feet to a point feet to the True Place of Beginning, and containing 0.0309 Acres of land, more or less, as determined in October, 2016 by Louis J. Giffels, Registered Surveyor No. 7790, with GBC Design, Inc., but subject to all legal highways and any restrictions, reservations, or easements of record.

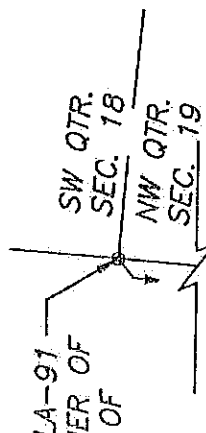
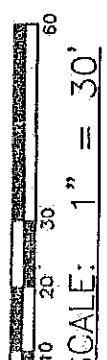
\*Basis of Bearing for this description is N 04°50'00" E along the centerline of Whipple Ave. N.W., as shown on Stark County tax map office survey PLA-18-SW-14 and as recorded in Instrument No. 201408150031152 of the Stark County Records

  
Louis J. Giffels, P.S. Reg. No. 7790



PS-90813

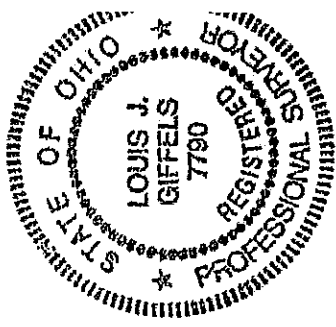
THE TOWNSHIP OF PLAIN, COUNTY OF  
STATE OF OHIO; AND KNOWN AS BEING  
NORTHWEST QUARTER OF SECTION 19  
SAID TOWNSHIP OF PLAIN



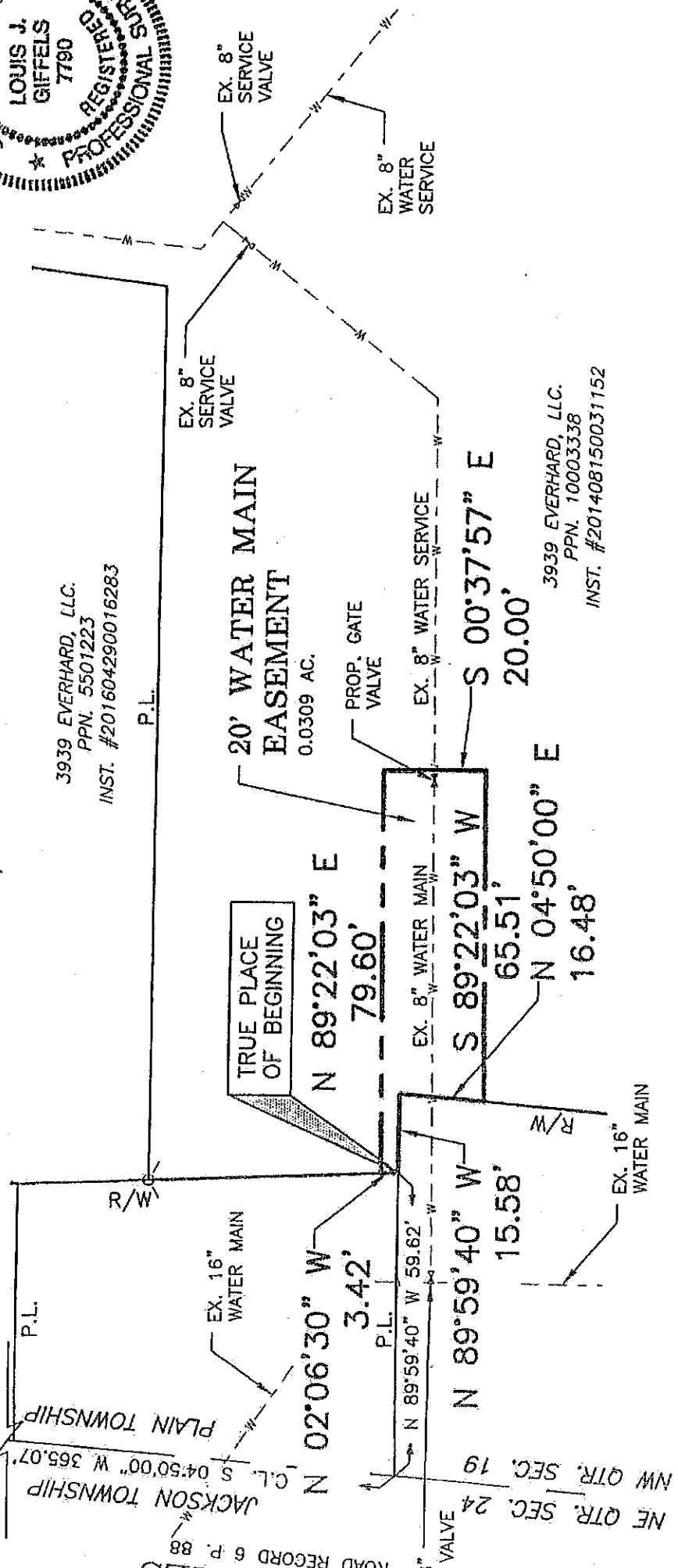
**BASIS OF BEARING (SURVEY)**  
N 04°50'00" E ALONG THE CENTERLINE OF  
WHIPPLE AVE., N.W. AS SHOWN ON STARK COUNTY  
TAX MAP OFFICE SURVEY PLA-18-SW-14 AND AS  
RECORDED IN INST. #201408150031152 OF THE  
STARK COUNTY RECORDS.

**LEGEND**  
P/L PROPERTY LINE  
R/W RIGHT OF WAY  
C.L. CENTER LINE

**BASIS OF BEARING (STATE PLANE)**  
THE OHIO STATE PLANE COORDINATE SYSTEM, NORTH  
ZONE(3401), NAD 83 (1986)  
THE S.C.G.R.S. POINTS USED AS REFERENCE STATIONS  
TO ESTABLISH THE DATUM ARE DESIGNATED AS PLA091  
AND PLA092  
ALL BEARINGS SHOWN ARE BASED ON GRID NORTH. ALL  
DIMENSIONS SHOWN ARE GROUND DISTANCES. TO OBTAIN  
A GRID DISTANCE, MULTIPLY GROUND DISTANCE BY THE  
0.99989421



3939 EVERHARD, LLC.  
PPN. 5501223  
INST. #201604290016283



3939 EVERHARD, LLC.  
PPN. 10003338  
INST. #201408150031152

ROAD RECORD 6 P. 88