



## *Engineering Department*

**DATE:** March 17, 2020  
**FROM:** Gabe Schell, City Engineer  
**ITEM:** Encroachment Agreement – 420 E Main Avenue

### **REQUEST**

Request approval of an encroachment agreement and waiver.

Please place this item on the 3/24/2020 City Commission meeting agenda.

### **BACKGROUND INFORMATION**

Patterson Place located at 420 E Main Avenue, has requested an encroachment in the right of way for a stairwell to be restored adjacent to North 5th Street (encroachments). The encroachments would include stairs and railings to access the basement of the Patterson Place. The encroachment committee reviewed and recommends approval of the attached agreement including a 20-year term.

### **RECOMMENDED CITY COMMISSION ACTION**

Approve encroachment agreement for Patterson Place.

### **STAFF CONTACT INFORMATION**

Gabe Schell, PE | City Engineer, 355-1505 or [gschell@bismarcknd.gov](mailto:gschell@bismarcknd.gov)

## **ENCROACHMENT AGREEMENT AND WAIVER**


The City of Bismarck hereby grants Patterson Place Limited Partnership, a Minnesota limited partnership, its successors and assigns (Grantee) the right to install and maintain a privately-owned stairwell & railing (encroachments) within the public right-of-way of North Fifth Street, adjacent to 420 E Main Avenue (as more particularly described on Exhibit 1, the “Real Property”), as shown on Exhibit 2 which is filed in the Engineering Department, effective May 1, 2020, subject to the following conditions:

1. The Grantee shall comply with all rules regarding the placement of the encroachments within public right-of-way as set by the City Engineer in accordance with City Ordinances and with City Ordinance 10-05-10.
2. The term of this grant shall be perpetual; provided, however, that if the building located on the Real Property (the “Building”) is substantially damaged or destroyed or subject to condemnation and either (i) the extent of such damage, destruction or condemnation is such that repair, reconstruction or restoration of the Building is not permitted under City Ordinances or (ii) such repair, reconstruction or restoration is not commenced within the period required under applicable City Ordinances, the City may cancel this grant at any time upon six (6) months’ written notice to the Grantee.
3. This Agreement may not be sold, assigned or transferred separately from the Real Property without the written consent of the City, which such consent will not be unreasonably withheld, delayed or conditioned. All rights, responsibilities, conditions and terms hereof and shall run with the land and are binding on any assignee, lessee, or future owners of any interest in the Real Property.

4. Upon the end of the term or prior abandonment by the Grantee, the Grantee shall, at its own expense, remove the encroachments and restore the public right-of-way to its original condition, if so required by the City.
  
5. 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, in exchange for the City's permission to operate and maintain the encroachments within the right-of-way, Grantee agrees to release the City, its assigns, or other franchised utilities from and waive any and all claims relating to said encroachments, but not limited to, damages arising from damage to the encroachments, loss of business, or other personal injury or property damage resulting from damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it is using the public right-of-way at its own risk. Grantee shall not look to the City, its assigns, or other franchised utilities to pay for any expense or damage to the encroachments by the City, its assigns, or other franchised utilities. Grantee agrees that it will hold harmless and indemnify the City, its assigns, or other franchised utilities from any and all claims in any way resulting from the placement of the encroachments within the public right-of-way. Grantee agrees that after installation of the encroachments, Grantee will restore the City right-of-way or street to its original condition. In the event the City is required to perform maintenance or construction on the right-of-way at the location of the encroachments, Grantee shall cooperate with the City in temporarily protecting the encroachments and accommodating the City's project, at Grantee's sole expense.
  
6. In the event of the commission of any breach of the terms of this Agreement by a party, the non-breaching party may cause this Agreement to be terminated on ten (10) days written notice. All obligations contained in paragraphs 4 and 5 will survive the termination of this Agreement, including but not limited to, the restoration of the property to the original condition.

PATTERSON PLACE LIMITED PARTNERSHIP,  
A Minnesota limited partnership

BY: Schuett Patterson Place, LLC  
Its General Partner

By:   
Thomas L. Schuett, President

3/17/2020  
Date

c/o The Schuett Companies, Inc.  
9000 Golden Valley Road  
Golden Valley, Minnesota 55427

City of Bismarck

\_\_\_\_\_  
Keith Hunke  
City Administrator

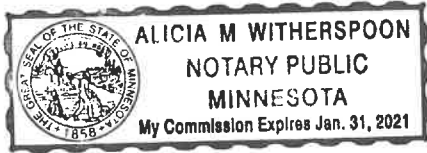
\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Bakken  
President, Board of City Commissioners

\_\_\_\_\_  
Date

STATE OF Minnesota )  
 ) SS.  
COUNTY OF Hennepin )

On this 17<sup>th</sup> day of March, 2020, before me personally appeared Thomas L. Schuett, President of Schuett Patterson Place, LLC, the general partner of Patterson Place Limited Partnership, a Minnesota limited partnership, known to me to be the person who is described in, and who executed the within and foregoing instrument and who acknowledged to me that he executed the same on behalf of said limited partnership.



[Signature]  
Notary Public  
My commission expires: 1/31/2021

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Keith Hunke, known to me to be the City Administrator of the City of Bismarck described in and that that executed the within instrument, and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public  
My commission expires:

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared Steve Bakken, known to me to be the President of the Board of City Commissioners of the City of Bismarck described in and that that executed the within instrument, and acknowledged to me that such entity executed the same.

\_\_\_\_\_  
Notary Public  
My commission expires:

## **EXHIBIT 1**

### **(Legal Description of the Real Property)**

Lots Seven (7), Eight (8), Nine (9) and Ten (10) and that part of a vacated alley, being the East Seventy-five feet (E. 75') of the East/West alley in Block Forty-eight (48) of the Original Plat to the City of Bismarck, North Dakota, which alley part is more particularly described as follows:

Beginning at the Southeast corner of Lot 6 of Block 48; thence West along the South line of Lot 6, a distance of 75 feet; thence South 20 feet to the North line of said Lot 9; thence East along the North line of Lots 9, 8 and 7, a distance of 75 feet to the Northeast corner of said Lot 7; thence North 20 feet along the West line of 5th Street, in Bismarck, Burleigh County, North Dakota, to the place of beginning.

Burleigh County, North Dakota

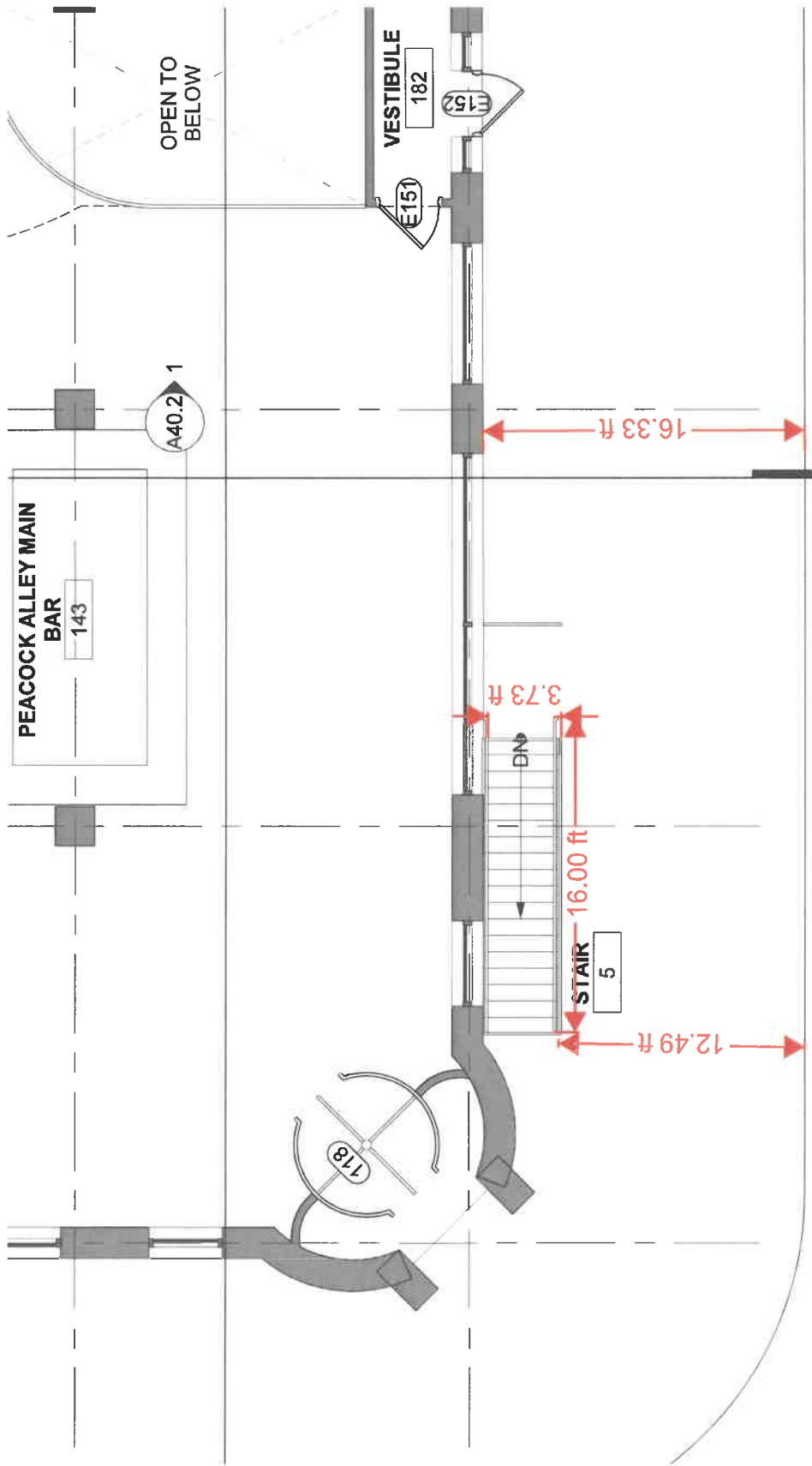


Exhibit 2