

Sunde Olson

KIRCHER & ZENDER P.L.C.

ATTORNEYS AT LAW

Steven R. Sunde*
Michael P. Kircher
Zachary R. Strom
Suzann M. Olson (Retired)
Margaret K. Koberoski (1969-2022)
Jan M. Zender (1956-2018)

June 18, 2025

HAND DELIVERED

Amanda Knoll
City Manager
City of St. James
P.O. Box 70
St. James, MN 56081

RE: Land Use and Easement Agreement (BMP Investments-City of St. James)
Our File: 110,004*

Dear Amanda:

Please find enclosed the signed and notarized Land Use and Easement Agreement. It is my understanding you will put this on the agenda for the July 1, 2025, City Council meeting.

As always, should you have any questions or comments, do not hesitate to contact me.

Very truly yours,


Michael P. Kircher
mkircher@sundeolson.com

MPK/yms

Enclosure

CC: Brianna Sanders (by e-mail)

LAND USE AND EASEMENT AGREEMENT

This Land Use and Easement Agreement ("Agreement") is made and entered into as of this 17 day of JUNE, 2025 (the "Effective Date"), by and between **BMP Investments LLC**, a Minnesota limited liability company ("Grantor"), and the **City of St. James**, a municipal corporation organized under the laws of the State of Minnesota ("City").

RECITALS

WHEREAS, Grantor is the fee owner of certain real property located in Watonwan County, Minnesota, more particularly described in **Exhibit "A"** attached hereto (the "Grantor Property");

WHEREAS, Grantor is in the process of development of Grantor's Property into a carwash facility (the "Existing Project") that will be located on portions of Grantor's Property, and as a result of the development of the project, will be required by the Minnesota Department of Transportation, to install and pay for vehicle turn lanes for access from Minnesota State Highway 4 and Highway 30 that runs adjacent to Grantor's property and provides vehicle access to the Existing Project.

WHEREAS, the City is in the initial stages of undertaking a development project adjacent to the Grantor Property (the "City Project");

WHEREAS, the Minnesota Department of Transportation ("MnDOT") requires the installation of turn lanes on the adjacent Minnesota State Highway as a condition of the development and use of Grantor's Existing Project;

WHEREAS, Grantor agrees to grant, and City agrees to accept, a perpetual and permanent easement and right-of-way over a portion of the Grantor Property to facilitate platting, infrastructure, and related improvements associated with the City Project;

WHEREAS, in consideration for the grant of easement by Grantor, the City agrees to bear the full cost of turn lane improvements required by MnDOT as part of the City Project, subject to timing based on the City's development schedule;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Grant of Easement

- 1.1. *Easement Description.* Grantor hereby grants to City a perpetual, exclusive easement and right-of-way over, under, and across the area described as follows:

The south 60 feet of the following described parcel:

That part of the Southeast Quarter of the Northeast Quarter (SE ¼ of NE ¼) of Section Twenty-four (24), Township One Hundred Six (106) North, Range Thirty-two (32) West, City of St. James, Watonwan County, Minnesota, described as follows: Beginning at the Northwest corner of the plat of Kelly's Acres, according to the recorded plat thereof; thence on an assumed bearing of South 88 degrees 17 minutes 13 seconds East, along the North line of said Kelly's Acres, a distance of 361.58 feet to the Northeast corner of said Kelly's Acres located on the West right of way line of State Highway Right of Way Plat No. 83-5, according to the record-ed plat thereof; thence North 0 degrees 01 minutes 43 seconds West, along said West line, a distance of 241.11 feet; thence North 88 degrees 17 minutes 13 seconds West a distance of 361.58 feet; thence South 0 degrees 01 minutes 43 seconds East a distance of 241.11 feet to the point of beginning, containing 2.00 acres, subject to easements now of record in said County and State.

(the "Easement Area").

- 1.2. *Easement Purpose.* The Easement Area shall be used by City for purposes of street and road access, paving, public right-of-way, grading, installation of infrastructure, sidewalk, and other lawful municipal development purposes related to the City Project.
- 1.3. *No Compensation.* The parties acknowledge that this grant is made without monetary consideration, in exchange for the obligations undertaken by City under this Agreement.
- 1.4. *Exclusive Use.* This easement shall be exclusive to the City for the purposes described herein, and Grantor shall retain no rights of use or access within the Easement Area, except as enjoyed by the general public upon completion of public improvements.
- 1.5. *Temporary Construction and Disturbance Easement.* Grantor hereby grants to the City, its contractors, agents, and assigns, a temporary construction and disturbance easement for an additional 20 feet, so that the City has access over the south eighty (80) feet of the Grantor Property (the "Temporary Easement Area") for a period of fifteen (15) months from the Effective Date. This easement shall be used for access, grading, staging, utility installation, equipment movement, and any other construction-related activities reasonably necessary for the completion of the City Project. Upon expiration of the fifteen (15) month term, all rights granted under this paragraph shall automatically terminate without further action required by either party.
- 1.6. *Contingency on Project Approval.* Notwithstanding anything to the contrary herein, the grant of the easement and all obligations of the City under this Agreement,

including the obligation to pay for the cost of turn lane improvements, are expressly contingent upon the City obtaining all necessary approvals for the City Project, including but not limited to project funding, regulatory approvals, permitting, and platting. In the event that the City Project is terminated or withdrawn for any reason, whether due to lack of funding, denial of approvals, or otherwise, this Agreement and the easement rights granted herein shall be null and void, and of no further force or effect. In such event, the City shall have no obligation to construct or pay for the turn lane improvements, and the full cost of any such improvements shall be the sole responsibility of the Grantor. Furthermore, the City shall, within a reasonable time following such termination, execute and record a release of easement in a form reasonably acceptable to Grantor, evidencing the termination of the easement rights granted herein.

1.7. *Minor Adjustment to Easement Area.* The parties acknowledge that the final location and configuration of the Easement Area, including the area generally described as the "south 60 feet" of the Grantor Property, may require minor adjustments upon final approval of the plat associated with the City Project. The parties agree that minor adjustments in the Easement Area location of up to four (4) feet in any direction to align with the final platted street location shall be deemed valid without the need for renegotiation. In such event, the parties agree to execute and record an amended easement agreement or exhibit to conform to the final, approved plat and legal description.

2. City's Obligations

2.1. *Turn Lane Improvements.* City shall be solely responsible for the cost and completion of all turn lane improvements required by MnDOT on the adjacent Minnesota State Highway(s) (State Highway 4 / State Highway 30).

2.2. *Timing.* The City shall complete the turn lane improvements as part of its City Project infrastructure timeline. The parties acknowledge that such work shall not be required immediately upon execution of this Agreement but shall be completed as reasonably necessary to meet MnDOT and development conditions of the City in connection with its development project.

3. Grantor's Obligations

3.1. *Street Assessments.* Grantor shall remain solely responsible for any special assessments levied by the City or other taxing authorities against the Grantor Property, including those relating to the Easement Area.

3.2. *No Reimbursement.* The City shall not be obligated to reimburse Grantor for any portion of such assessments.

3.3. *No Disturbance.* Grantor shall not interfere with, disturb, or otherwise impede the City's use of the Easement Area or the Temporary Easement Area during the construction and development activities contemplated under this Agreement. This obligation includes, without limitation, refraining from placing any structures, materials, or obstructions within the Easement Area or Temporary Easement Area that would hinder access, construction operations, or public improvements.

3.4. *Consent to Platting and Easement Documentation.* Grantor hereby consents to cooperate with the City's future platting process as it relates to the City's Project outlined in this Agreement, including but not limited to the dedication of a 60-foot easement as contemplated herein. Grantor agrees to cooperate in good faith and execute any documents reasonably necessary to facilitate the platting, including signature of final plats, easement dedications, and related filings, provided that such documents are consistent with the terms of this Agreement and do not materially alter the rights or obligations of Grantor without its prior written consent.

4. Temporary Disruption and Waiver of Damages

4.1. *Acknowledgement of Disruption.* Grantor acknowledges that, as a necessary condition of the City's subdivision development project and creation of turn lanes, certain public streets and highways that currently provide access to Grantor's existing project (the "Existing Project") will be temporarily closed. This work is projected to disrupt Grantor's business operations and may restrict or limit access from public highways located to the east of the Grantor Property.

4.2. *Anticipated Business Closure.* Grantor acknowledges that the anticipated disruption will likely require the temporary closure of Grantor's business operations for a minimum period of two (2) weeks.

4.3. *Waiver of Damages.* Grantor expressly understands the foregoing hardship and, in consideration of the terms of this Agreement and the benefits conferred thereby, hereby irrevocably waives and releases the City from any and all claims for damages or losses, including economic losses or business interruption, resulting from or arising out of the temporary street closures or access limitations related to the City Project.

5. General Provisions

5.1. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. The easement rights granted herein shall run with the land.

5.2. *Recording.* This Agreement shall be recorded in the Office of the County Recorder or Registrar of Titles of Watonwan, Minnesota.

5.3. *Entire Agreement.* This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior agreements and understandings.

5.4. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

5.5. *Dispute Resolution and Arbitration.* In the event of any dispute, claim, or controversy arising out of or relating to this Agreement, the parties shall first attempt in good faith to resolve such dispute through informal discussions. If the matter is not resolved within thirty (30) days, either party may submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall be conducted in St. James, Minnesota. Judgment upon the award rendered by the arbitrator(s)


may be entered in any court having jurisdiction. Each party shall bear its own costs and attorneys' fees, except as otherwise provided by the arbitrator(s).

5.6. *Severability.* If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held to be invalid or unenforceable, the remainder of this Agreement or the application of such term, provision, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, provision, covenant, and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.7. *Authority and Title Warranty.* Each party represents and warrants that it has full power and authority to enter into and perform this Agreement, and that the execution and delivery of this Agreement has been duly authorized by all necessary corporate or governmental action. Grantor further warrants that it holds good and marketable title to the Easement Area, free and clear of all liens, mortgages, encumbrances, claims, or interests of any kind, except those of record or as otherwise disclosed in writing to the City prior to the Effective Date. Grantor further represents that no mortgage, lien, or encumbrance exists that would prohibit or impair Grantor's ability to grant the easement rights set forth herein, and that no third-party consents are required to effectuate this conveyance free and clear of all liens, encumbrances, claims, or interests of any kind, except those of record or as otherwise disclosed in writing to the City prior to the Effective Date.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

BMP Investments LLC


By: Bramer L. Powers
Its: Manger

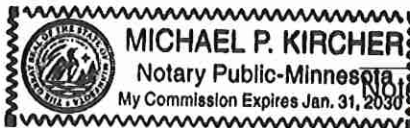
City of St. James


Chris Whitehead, Mayor


Amanda Knoll, City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF WATONWAN)

This instrument was acknowledged before me June 17, 2025, before me, a notary public within and for said County and State, personally appeared **Chris Whitehead and Amanda Knoll**, to me personally known, who, being each by me duly sworn did say that they are respectively the Mayor and the City Manager of the City of St. James, and that they executed the same as their free act and deed.



STATE OF MINNESOTA)
) ss.
COUNTY OF WATONWAN)

This instrument was acknowledged before me on June 16, 2025, before me, a notary public within and for said County and State, personally appeared **Bramer L. Powers**, as the Manager of BMP Investments, LLC, a Minnesota limited liability company, on behalf of the company.



Bramer L. Powers
Notary Public

Exhibit "A"

(Legal Description of Grantor Property)

That part of the Southeast Quarter of the Northeast Quarter (SE ¼ of NE ¼) of Section Twenty-four (24), Township One Hundred Six (106) North, Range Thirty-two (32) West, City of St. James, Watonwan County, Minnesota, described as follows: Beginning at the Northwest corner of the plat of Kelly's Acres, according to the recorded plat thereof; thence on an assumed bearing of South 88 degrees 17 minutes 13 seconds East, along the North line of said Kelly's Acres, a distance of 361.58 feet to the Northeast corner of said Kelly's Acres located on the West right of way line of State Highway Right of Way Plat No. 83-5, according to the recorded plat thereof; thence North 0 degrees 01 minutes 43 seconds West, along said West line, a distance of 241.11 feet; thence North 88 degrees 17 minutes 13 seconds West a distance of 361.58 feet; thence South 0 degrees 01 minutes 43 seconds East a distance of 241.11 feet to the point of beginning, containing 2.00 acres, subject to easements now of record in said County and State.