

ENCROACHMENT LICENSE AGREEMENT

Address:

424 E. Chicago Avenue
Naperville, IL 60540

PIN:

08-18-328-021

Return to:

City Clerk
City of Naperville
400 South Eagle Street
Naperville, IL 60540
Attn: TED

(for Recorder's Use Only)

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE AGREEMENT (hereinafter referred to as "Agreement") is made this _____ day of _____, 2021 (hereinafter "**Effective Date**") between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government (hereinafter "**Licensor**") with an office located at 400 South Eagle Street, Naperville, Illinois 60540, and Christopher Cobb, (hereinafter "**Licensee**") with an address of 424 E. Chicago Avenue, Naperville, IL 60540.

WITNESSETH THAT:

WHEREAS, Licensee owns the real estate which is legally described on **Exhibit A** (hereinafter "Licensee's Property"); and

WHEREAS, Licensor owns the Sleight Street right-of-way adjacent to the Licensee's Property (hereinafter "Licensor's Property"); and

WHEREAS, Licensee's Property is currently improved with a single-family home, an iron fence with stone pillars, and other associated accessory improvements as depicted on the Site Plan attached hereto as **Exhibit B** and

WHEREAS, two stone pillars and a portion of the iron fence, (hereinafter "**Licensee's Encroachments**") currently encroach on a portion of Licensor's Property (hereinafter "**Encroachment Area**") as depicted on **Exhibit B**; and

WHEREAS, Licensor has determined that, subject to strict compliance with the terms and conditions set forth herein, Licensee's Encroachments will not adversely impact the Encroachment Area or impair the public health, safety and welfare; and

WHEREAS, Licensee and Licensor consent and agree to such Licensee's Encroachments as described herein subject to the terms and conditions hereinafter provided.

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

1. The foregoing Recitals are hereby incorporated herein and made part hereof as though fully set forth herein.
2. To the extent of its authority Licensor does hereby grant to Licensee, and Licensee's successors and assigns, a nonexclusive and revocable license for the benefit of Licensee's Property to encroach upon and to occupy and use Licensor's Property in the manner set forth herein. The following exhibits are attached hereto and made a part hereof:
 - a. **Exhibit A**: A legal description of the Licensee's Property.
 - b. **Exhibit B**: A Site Plan that depicts Licensee's Encroachments and the Encroachment Area.
3. Except as otherwise provided herein, the Licensee's Encroachments shall comply with all applicable provisions of the Naperville Municipal Code as amended from time to time.
4. The License herein granted shall be limited to the use by Licensee of the Encroachment Area for the purpose of maintaining, repairing and replacing thereon Licensee's Encroachments as provided herein.
5. The parties agree that this grant of License to encroach shall not otherwise modify or remove the requirements established in the public right-of-way and easements and

- covenants of record. The parties agree that the License granted herein is subject to any rights of third parties in the Licensor's Property and Licensor's Easement, and Licensor makes no warranty regarding Licensee's right to use the Encroachment Area except as regards to the interest of Licensor as provided herein.
6. Licensee accepts the Encroachment Area in their condition as of the Effective Date of this Agreement.
 7. Licensee assumes all liability and shall defend, indemnify, hold harmless and compensate Licensor, its officers, agents and employees for any injury or damage to person or property occasioned by or arising in connection with the use of the above described Encroachment Area and the existence or condition of Licensee's Encroachments. Licensee further agrees to defend (with legal counsel approved of by Licensor, which approval shall not be unreasonably withheld), indemnify, and save harmless Licensor and its officers, agents and employees from and against: (i) any claim or action against Licensor, its officers, agents, or employees, arising out of or related to this License, Licensee's Encroachments, and the condition of the Encroachment Area, and any act or omission of Licensee, Licensee's agents or assigns, or any independent contractor acting on Licensee's behalf with respect thereto; and (ii) any claim or expenses incurred by Licensor in enforcing the terms and provisions of this License against Licensee, including but not limited to reasonable attorney's fees (whether in-house or outside counsel) and costs.
 8. The City of Naperville and its officers, agents, and employees shall be named as additional insureds on Licensee's, and Licensee's contractors', insurance policies for workers compensation, general liability, automobile liability for any work or activities to be performed within the Encroachment Area. Copies of additional insurance certificates and additional insured endorsements showing the policy limits and the coverage afforded the City shall be provided by the Licensee to the Licensor prior to installation of either or both of Licensee's Encroachments.
 9. An ordinance approving a temporary use agreement for improvements located on Lot 2 of the C. Cobb Subdivision ("**Temporary Use Ordinance**") which is adjacent to the right-of-way on which Licensee's Encroachments are located, was passed by the Naperville City Council on February 16, 2021. Licensee's Encroachments are attached to those improvements. If the improvements encompassed within the Temporary Use Ordinance are required to be removed, Licensee's Encroachments shall be removed at the same time. Upon such removal and restoration of the Encroachment Area to good condition, this Agreement shall automatically expire without further action by either party hereto.
 10. The provisions and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the respective parties hereto, and shall run with the title of Licensee's Property unless terminated as provided herein.
 11. Licensee shall maintain Licensee's Encroachments and the Encroachment Area in a clean and sightly manner, free of obstructions and debris. Upon demand from Licensor, Licensee shall immediately correct any defect in Licensee's Encroachments

and shall remove any grease or debris of any kind from the Encroachment Area which, in the sole determination of Licensor, presents an unsightly or unsafe condition. Such actions shall be accomplished to the satisfaction of Licensor. While nothing contained herein shall impose upon Licensor any duty or obligation to maintain the Encroachment Area or to effect any repair or maintenance of Licensee's Encroachments, Licensor shall have the right to enter upon the Encroachment Area to remove, repair, maintain and/or clean Licensee's Encroachments and/or the Encroachment Area when, in the sole determination of the Licensor, such action(s) are appropriate to protect the public health, welfare, safety, or aesthetics of Licensee's Encroachments and/or the Encroachment Area. Within thirty (30) days of receipt of a bill for such services from the Licensor, Licensee shall remit payment in full to Licensor. Licensee agrees that Licensor shall have the right to record a lien against Licensee's Property for all amounts due, plus interest, if payment in full of such bill is not timely made.

12. This License may be terminated by either party as follows:
 - a. Licensor may terminate this License upon one sixty (60) days' written notice if it determines that: (i) Licensee's Encroachment is not properly maintained; (ii) the existence of this License or Licensee's Encroachments presents a danger or impediment to the public's health, safety or welfare; (iii) Licensee's Encroachments, or any part thereof, interfere with or will potentially interfere with Licensor's use or proposed use of Licensor's Property; (iv) Licensee ceases using the Encroachment Area for all or any portion of Licensee's Encroachments; (v) or for any other reason determined to be necessary and appropriate by Licensor.
 - b. Licensee may terminate this License upon sixty (60) days' written notice provided such termination shall not be effective until Licensee's Encroachments are removed and the Encroachment Area restored to the satisfaction of Licensor.
13. If this Agreement is terminated, Licensee shall cause the removal of Licensee's Encroachments and shall return the Encroachment Area to substantially the same, or better, condition as of the Effective Date of this Agreement. In the event Licensee fails to cause such removal within ninety (90) days of notice of termination by Licensor, Licensor shall have the right to enter upon the Encroachment Area and remove Licensee's Encroachment. All costs of said removal as provided herein shall be borne by Licensee and shall be paid to Licensor within thirty (30) days of receipt of a bill therefor. Licensee agrees that Licensor shall have the right to record a lien against Licensee's Property for all amounts due, plus interest and recording costs, if payment in full of such bill is not timely made.
14. Upon thirty (30) days' notice from Licensor, Licensee shall temporarily move or relocate Licensee's Encroachments to permit work or other activity within the Encroachment Area. Licensee assumes all risk in the placement of Licensee's Encroachments and shall be responsible for removal or relocation of Licensee's Encroachments in the event that Licensor requires access to perform work within the Encroachment Area. Licensor shall make reasonable efforts to avoid disturbance of

Licensee's Encroachments.

15. This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the parties hereto.
16. Licensee shall be responsible for payment of Licensor's reasonable attorneys' fees and costs associated with enforcement of any aspect of this Agreement unless there is a finding in Licensee's favor rendered by a court of competent jurisdiction, or unless Licensor voluntarily dismisses any legal claim.
17. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this License shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
18. Notice: Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by fax (with verbal confirmation of receipt) or by mail, certified mail, return receipt requested, or by personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection.

For the Licensor:

City of Naperville
Director of T.E.D.
400 S. Eagle Street
Naperville, IL 60540
Attention: Legal Department

For the Licensee:

Christopher Cobb
424 E. Chicago Avenue
Naperville, IL 60540

19. This Encroachment License Agreement shall be binding upon Licensor, Licensee, and their respective assigns and transferees. A copy of this Agreement shall be recorded with the DuPage County Recorder.
20. It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
21. The obligations of the parties under this Agreement, to the extent that they arose while the Agreement was in effect and remained unfulfilled at the time of termination, shall survive the termination of this Agreement.

22. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.
23. The effective date (“Effective Date”) of this Agreement shall be the date on which it is fully executed by both parties.
24. The undersigned warrant and represent that they are authorized to execute this Encroachment License Agreement.

Signatures on following pages.

IN WITNESS WHEREOF, the parties hereto have executed this Encroachment License Agreement as of the day and year first above written.

LICENSOR/CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

Attest:

By: _____
Pam Gallahue, Ph.D.
City Clerk

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Douglas A. Krieger, personally known to me to be the City Manager of the City of Naperville, and Pam Gallahue, Ph.D. personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the City Manager and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this _____ day of _____, 2021.

(seal)

Notary Public

LICENSEE/ CHRISTOPHER COBB

By: 

[Print Name] Christopher Cobb

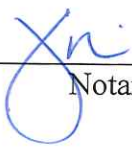
[Title] _____

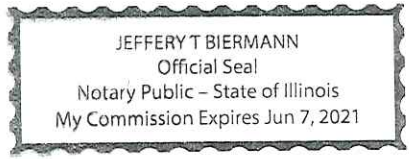
State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____ and Christopher Cobb, appeared
before me this day in person and acknowledged the signatures set forth above.

Given under my hand and official seal this 25th day of January, 2021.

(seal)


Notary Public



LEGAL DESCRIPTION

08-18-328-021

LOT 1 IN C & C COBB RESUBDIVISION OF PARTS OF LOTS 1 AND 2 OF FORTHILL ADDITION TO NAPERVILLE, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED AUGUST 13, 2009 AS DOCUMENT R2009-126281, IN DUPAGE COUNTY, ILLINOIS.

PROPOSED SITE PLAN

FOR THE RESUBDIVISION OF LOT 1 IN C & S COBB RESUBDIVISION OF PARTS 1 AND 2 OF FORT HILL ADDITION TO NAPERVILLE, A SUBDIVISION OF PART OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AUGUST 13, 2009 AS DOCUMENT R2009-126281, IN DUPAGE COUNTY.

APPLICANT SHALL OBTAIN PERMIT FOR ANY RIGHT-OF-WAY WORK WITHIN THE CHICAGO AVENUE RIGHT-OF-WAY REMOVE EX. DEPRESSED CURB & ASPHALT PAVEMENT WITH FULL CURB & SOD

REMOVE EX. WALK & REPLACE WITH SOD

PROPOSED 5' PUBLIC UTILITY & DRAINAGE EASEMENT TO BE DEDICATED ON THE C. COBB SUBDIVISION PLAT

PROPOSED 5' PUBLIC UTILITY & DRAINAGE EASEMENT TO BE DEDICATED ON THE C. COBB SUBDIVISION PLAT

53 SF OF EXISTING PAVERS TO BE MOVED WITHIN 5' OF PROPERTY LINE

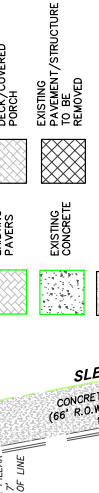
PROPOSED 5' PUBLIC UTILITY & DRAINAGE EASEMENT TO BE DEDICATED ON THE C. COBB SUBDIVISION PLAT

LEGEND

FOUND IRON ROD	PROPOSED
FOUND IRON PIPE	SANITARY SEWER
BOUND CROSS IN CONCRETE	STORM SEWER
BOUNDARY LINE	CATCH BASIN
ADJACENT PROPERTY LINE	OPEN LID MANHOLE
ON-SITE STRUCTURE LINE	CLOSED LID MANHOLE
RIGHT-OF-WAY LINE	INLET
BUILDING SETBACK LINE	WATER MAIN
EXISTING CURB LINE	VALVE
EXISTING EASEMENT LINE	HYDRANT
STREET LIGHT	FLARED END
EXISTING UTILITY POLE	UTILITY LIGHT
EXISTING B-BOX	UTILITY POLE
EXISTING FENCE	B-BOX
	RETAINING WALL
	SILT FENCE
	CONTOUR
	701
	FENCE
	100-YEAR OVERFLOW PATH
	STORM STRUCTURE W/ INLET PROTECTION
	EX. TREE TO BE REMOVED

PAVEMENT LEGEND

EXISTING PAVERS	EXISTING CONCRETE	EXISTING BITUMINOUS PAVEMENT
EXISTING DECK/COVERED PORCH	EXISTING PAVEMENT/STRUCTURE TO BE REMOVED	



NOTES:

1. COVERED SANITARY SEWER EXPANSION JOINT WITH TRENCH SHALL BE PLACED EVERY 100' ON EITHER SIDE OF DRAINAGE STRUCTURES. P.C.S. ARE CONSTRUCTED ADJACENT TO EXISTING CURB & GUTTER. THE EXISTING CURB & GUTTER SHALL BE MAINTAINED IN PLACE. DRAINAGE CURB SHALL BE PLACED ON THE EXISTING CURB & GUTTER. THE CURB SHALL BE PLACED ON THE EXISTING CURB & GUTTER. THE CURB SHALL BE PLACED ON THE EXISTING CURB & GUTTER.
2. TOILET CONTROL JOINTS OR SAWCUTS SHALL BE MADE EVERY 10'. SAWCUTS SHALL BE MADE WITHIN TWENTY-FOUR (24) HOURS AND SEALED PRIOR TO APPLICATION OF SEALANT. JOINTS SHALL BE CLEAN AND DRY PRIOR TO APPLICATION OF SEALANT.
3. FOR CURB AND GUTTER CONSTRUCTION OVER UTILITY TRENCHES, TWO (2) EROSION CONTROL BARRIERS (NO. 1) SHALL BE PLACED IN THE CURB AND GUTTER, CENTERED FOUR FEET APART.



CITY OF NAPERVILLE
STANDARD
DETAIL
590.20
REVISED 03/2003
SHEET 1 OF 1

PROPOSED SITE PLAN
424 E. CHICAGO AVE.
NAPERVILLE, IL

CHECKED BY: BMM
DATE: 07/07/21
JOB NUMBER: 19-283
SHEET: 1 OF 1
DATE: 07/19/21
DESCRIPTION: PER VILLAGE REVIEW

MARTIN M. Engineering, Inc.
SITE DESIGN CIVIL ENGINEERS & SURVEYORS
20723 OAKWOOD DRIVE
MOKEVA, ILLINOIS 60448
VOICE: (708) 995-1323
FAX: (708) 995-1384
LICENSE NO. 164.062635-0010

LOT 1 (12,766 SF)
LOT 2 (12,640 SF)

CHICAGO AVENUE
SLEIGHT STREET

LOT 13 & PART OF LOTS 2 & 12
IN FORT HILL ADDITION
PIN # 08-18-328-019
JAMES & LAURIE LEE

PART OF LOTS 2 & 12 IN FORT
HILL ADDITION
PIN # 08-18-328-018
JOHN & JENNIFER WERNEKE

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Exhibit C