

**GRANTOR:** John W. Feldott  
as Successor Trustee under Trust  
Agreement Dated November 13, 1996,  
as restated June 28, 2016 and known  
as the Donald A. Feldott Trust

**GRANTEE:** City of Naperville,  
an Illinois Municipal Corporation  
400 South Eagle Street  
Naperville, IL 60540

**PROPERTY ADDRESS:**  
8 West Chicago Avenue  
Naperville, IL 60540

**P.I.N.**  
07-13-436-012 [part of]

**Return to:**  
City Clerk  
City of Naperville  
400 S. Eagle St.  
Naperville, IL 60540

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Above space reserved for Recorder

## **TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

**[Part of 8 West Chicago Avenue, Naperville, IL]**

**THIS TEMPORARY CONSTRUCT EASEMENT AGREEMENT (“Agreement”)** is entered into by and between John W. Feldott as Trustee under Trust Agreement dated November 13, 1996, as restated June 28, 2016, and known as the Donald A. Feldott Trust, with offices located at 2857 Bond Circle, Naperville, IL 60563 (“**Grantor**” or “**Owner**”) and the City of Naperville, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois (“**Grantee**” or “**City**”), with an address of 400 South Eagle Street, Naperville, IL 60540. Grantor and Grantee shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

## **RECITALS**

- A. **WHEREAS**, the City is undertaking reconstruction of the Washington Street Bridge located in the City’s downtown (“**Washington Street Bridge Replacement Project**” or “**Project**”); and

- B. **WHEREAS**, the Owner is the owner in fee simple of certain real property and all improvements located thereon located at 8 West Chicago Avenue, Naperville, IL, 60540, legally described on **Exhibit A** and depicted on **Exhibit B**, and having parcel identification number 07-13-436-012 (the “**Property**”); and
- C. **WHEREAS**, the City has determined that it is necessary and in the public interest to acquire a temporary construction easement (“**Temporary Easement**”) in 0.007 acre of the Property as depicted on **Exhibit B** and legally described on **Exhibit C** (hereinafter the “**Temporary Easement Premises**”) which will be used by the City for the Project as provided herein, and Grantor has agreed to grant the City said Temporary Easement on the Temporary Easement Premises for the purposes set forth herein.
- D. **WHEREAS**, in entering into this Agreement and undertaking the obligations provided herein, the City is acting pursuant to its home rule authority under the laws and Constitution of the State of Illinois.

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and for other valuable consideration received the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.**

1.1 The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph 1.1 in their entirety.

2. **GRANT OF TEMPORARY EASEMENT**

2.1 **Grant of Temporary Easement.** In consideration of the terms, conditions, and covenants set forth herein, the sufficiency of which is acknowledged by the Parties hereto to be sufficient, Grantor hereby grants the City of Naperville a temporary easement (“**Temporary Easement**”) over, upon, under, through, and across the Temporary Easement Premises for the purposes of: (i) providing a staging area for construction of the Washington Bridge replacement Project; (ii) providing access for utility installation on the Premises; (iii) regrading and reconstruction of the Temporary Easement Premises; (iv) installing stairs to connect the ramp that leads to the basement to the higher grade of the alley that will result from the Project; and (v) associated construction activities.

The temporary easement granted herein shall be both exclusive and non-exclusive as follows: Grantor agrees that Grantee shall have exclusive use of the Temporary Easement Premises during Project periods where Grantee determines that exclusive use thereof is needed for Project purposes (“**Exclusive Use Periods**”). Grantee shall give Grantor not less than seven (7) days’ advance notice that an Exclusive Use Period will commence and shall promptly give notice when said Exclusive Use Period ends. Other than said Exclusive Use Periods, the Temporary Easement granted herein shall be non-exclusive such that Grantor may use the Temporary Easement

Premises so long as such use does not interfere with the Temporary Easement purposes described above.

2.2 Term of Temporary Easement. The grant of the Temporary Easement described herein shall commence on the Effective Date Agreement (as Effective Date is defined in Section 7.12 hereof) and expire upon the later of three (3) years from the Effective Date or thirty (30) days after completion of the Project, as determined by the City. Upon expiration of the Temporary Construction Easement granted by the Owner to the City hereunder, the City will record a release of this Temporary Construction Easement with the Office of the DuPage County Recorder.

2.3 Notice. The City will give Owner not less than thirty (30) days advance notice of its intent to begin using the Temporary Construction Easement Premises for the purposes set forth above.

3. **CONSIDERATION.**

3.1 Subject to the terms and conditions set forth herein, the total consideration (“**Consideration**”) to be paid by the City to Grantor for the Temporary Easement on the Temporary Easement Premises as set forth herein, including but not limited to all damages to the remainder of the Property related to or resulting therefrom, is thirteen thousand, two hundred and thirty dollars (\$13,230.00) the sufficiency of which is hereby acknowledged. Said amount shall be paid to Grantor by the City within thirty (30) days of the Effective Date of this Agreement.

4. **GRANTOR’S REPRESENTATIONS AND COVENANTS.**

4.1 Grantor represents and warrants that:

4.1.1 It has good title to the Temporary Easement Premises.

4.1.2 It has the sole authority to grant the Temporary Easement on the Temporary Easement Premises as described herein. Grantor shall provide the City with fully executed copies of tenant and lessee releases with respect to the Temporary Easement granted herein prior to City payment of the consideration described herein; and

4.1.3 The Temporary Easement Premises are not the subject of any pending real estate tax special assessment or litigation. Grantor further acknowledges and represents that to the best of its knowledge the Temporary Easement Premises are not the subject of any environmental action, inquiry, or investigation.

5. **CITY AGREEMENTS DURING CONSTRUCTION.**

5.1 During construction of the Project which affects the Property, the City agrees to leave a three foot (3’) clearance to the basement of the structure on the Property in order to facilitate beer deliveries to The Lantern restaurant which is a tenant located on the Property.

5.1.1 Notwithstanding the foregoing, access to the basement for beer deliveries will not be available for two weeks during the installation described in Section 2.1(iv) of the Grant of Easement. Subject to an event of Force Majeure as defined in Section 7.12 hereof, said installation will be completed by the City within two (2) consecutive weeks after such installation is begun.

5.2 The City agrees that the tenant door on the east side of the building located on the Property will be accessible during construction of the Project.

5.3 As part of the Project, the City will remove the wooden fencing that currently encloses the refuse area located on the east side of the Property. After the Project is complete, the City will replace the fencing in generally the same location with generally similar materials as determined with input from the Owner.

All containers for general refuse and recyclable materials, and the grease trap shall be removed from the enclosed refuse area of the TCE Premises during the term of the Temporary Easement. During the term of the Temporary Easement, general refuse, recyclable materials, and grease for The Lantern restaurant may be disposed by The Lantern as needed at the location depicted on **Exhibit D**. The City shall cause Groot (Groot Industries, Inc.) to remove the containers for general refuse and recyclable materials, and the grease trap, from the TCE Premises and replace them when the TCE has expired.

5.4 If the provisions of Sections 5.1, 5.2 and/or 5.3 above are not complied with, Grantor may contact the Director of T.E.D. (see Section 7.6) and Grantee shall take reasonable steps to ensure compliance.

## **6. DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS.**

6.1 Grantor/Owner. Grantor shall defend, indemnify and hold the City of Naperville and its officers, agents, representatives, and employees harmless from and against any claims, demands, or actions of any kind arising out of the grant herein of the Temporary Easement on the Temporary Easement Premises brought by any person or entity claiming to have a rental, lease, or other interest of any kind in any portion of the Temporary Easement Premises, provided that in the event that any such claims or causes of actions are asserted against the City, the City shall immediately furnish Grantor with written notification thereof.

6.2 Grantee/City. Except for the negligent and willful misconduct of the Grantor and its officers, employees, agents, affiliates, parent companies, subsidiaries, and their successors ("**Indemnitees**"), the City shall defend, indemnify, and hold harmless the Indemnitees from and against claims or causes of action arising out of the use of the Temporary Easement Premises for the uses described herein, provided that in the event that any such claims or causes of actions are asserted against Grantor, Grantor shall immediately furnish the City with written notification thereof.

7. **GENERAL PROVISIONS.**

7.1 **Entire Agreement.** This Agreement sets forth and constitutes the entire agreement between the Parties with respect to the subject matter described herein and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning the subject matter. This Agreement may be modified only by a written document signed by both Parties.

7.2 **Binding Nature.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the tenants, lessees, transferees, assigns, successors in interest, representatives, heirs, executors, and administrators of the Parties hereto.

7.3 **Severability.** If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

7.4 **Fees and Expenses.** The Parties agree to bear their own costs, attorneys' fees and related expenses associated with this Agreement and any dispute between the Parties.

7.5 **Joint Preparation.** The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

7.6 **Notices:** Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by mail, certified mail, return receipt requested, overnight mail, 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.

**NOTICES TO THE CITY OF NAPERVILLE**

Mike DiSanto, City Attorney  
City of Naperville Municipal Center  
400 South Eagle Street  
Naperville, IL 60540

With a copy to:

William Novack  
Director of T.E.D.  
City of Naperville Municipal Center  
400 South Eagle Street  
Naperville, IL 60540  
Email address: [novackw@naperville.il.us](mailto:novackw@naperville.il.us)

## NOTICES TO THE GRANTOR

John W. Feldott  
2857 Bond Circle  
Naperville, IL 60563

With a copy to:

Jon Moss, Esq.  
2857 Bond Circle  
Naperville, IL 60563

7.7 Choice of Law/Venue. This Agreement shall be governed, in all respects, by the laws of the State of Illinois, irrespective of its choice of law rules. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

7.8 Exhibits Incorporated. All exhibits referenced herein are deemed incorporated herein and made part hereof.

7.9 Authorizations. Each of the signatories to this Agreement represents and warrants that they are authorized to execute this Agreement on behalf their respective Party and by such signature to bind that Party to this Agreement.

7.10 Survival. The following provisions of this Agreement shall survive the expiration or termination of this Agreement: Section 4 and each subsection thereof and Subsections 1.1, 6.1, 6.2, 7.1 through 7.5, and 7.7 through 7.10.

7.11 Recordation. This Agreement shall be recorded by the City with the DuPage County Recorder.

7.12 Force Majeure. Whenever a period of time is provided for in this Agreement for either Party to do or perform any act or obligation, neither Party shall be liable for any delays or inability to perform due to causes beyond the control of said party such as war, riot, strike or lockout by or against either party's own employees or suppliers, unavoidable casualty or damage to personnel, materials or equipment, pandemics, systemic supply-chain interruptions, fire, flood, storm, earthquake, tornado or any act of God (“**Events of Force Majeure**”).

7.13 Effective Date. The effective date (“**Effective Date**”) of this Agreement shall be the date upon which it has been fully executed by both Parties hereto.

**IN WITNESS WHEREOF**, we have executed this Agreement effective as of the Effective Date set forth above.

/SIGNATURES ON FOLLOWING PAGES/

**GRANTOR: JOHN W. FELDOTT AS SUCCESSOR TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1996, AS RESTATED JUNE 28, 2016, AND KNOWN AS THE DONALD A. FELDOTT TRUST**

By \_\_\_\_\_

Printed Name: John W. Feldott

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 John W. Feldott appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

(seal)

\_\_\_\_\_  
Notary Public





## **EXHIBIT A**

### **LEGAL DESCRIPTION**

LOT 1 OF FRIDLEY'S SUBDIVISION OF PART OF LOT 2 IN BLOCK 5 OF SLEIGHT'S SECOND ADDITION TO NAPERVILLE; ALSO, BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF FRIDLEY'S SUBDIVISION OF PART OF LOT 2 OF SLEIGHT'S SECOND ADDITION TO NAPERVILLE; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 1, 100 FEET FOR A PLACE OF BEGINNING; THENCE SOUTHERLY PARALLEL TO THE WEST LINE OF SAID LOT 1, 33 FEET; THENCE WEST 6.7 FEET TO THE EAST LINE OF SAID LOT; THENCE NORTHEASTERLY ALONG THE EAST LINE OF THE SAID LOT 33.6 FEET TO THE POINT OF BEGINNING; ALL OF SAID PREMISES BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID FRIDLEY'S SUBDIVISION RECORDED MARCH, 1856, AS DOCUMENT 10255, IN DUPAGE COUNTY, ILLINOIS.

SITUATED IN THE COUNTY OF DUPAGE AND STATE OF ILLINOIS.

PERMANENT TAX NUMBER(S): 07-13-436-012

#### **COMMON ADDRESSES:**

8 West Chicago Avenue  
Naperville, IL 60540



## EXHIBIT C

### LEGAL DESCRIPTION OF TEMPORARY EASEMENT

THAT PART OF LOT 1 IN FRINDLEY'S SUBDIVISION, RECORDED MARCH 26, 1856 IN DUPAGE COUNTY AS DOCUMENT NUMBER 10255, BOOK 19, PAGE 158, IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS, BEARINGS AND DISTANCES BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 83 (2011 ADJUSTMENT), WITH A COMBINED FACTOR OF 0.99995095, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 2 DEGREES 10 MINUTES 24 SECONDS WEST A RECORD DISTANCE 100 FEET ALONG THE EAST LINE OF SAID LOT 1; THENCE SOUTH 2 DEGREES 10 MINUTES 24 SECONDS WEST 33.40 FEET ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 87 DEGREES 40 MINUTES 22 SECONDS WEST, 4.63 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 7 DEGREES 15 MINUTES 3 SECONDS WEST, 23.11 FEET ALONG THE WESTERLY LINE OF WASHINGTON STREET; THENCE DUE WEST 18.47 FEET TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 2 DEGREES 10 MINUTES 24 SECONDS EAST, 11.79 FEET ALONG SAID WEST LINE; THENCE SOUTH 87 DEGREES 5 MINUTES 47 SECONDS EAST, 13.22 FEET; THENCE NORTH 3 DEGREES 36 MINUTES 37 SECONDS EAST 12.16 FEET; THENCE SOUTH 87 DEGREES 24 MINUTES 40 SECONDS EAST, 6.98 FEET TO THE POINT OF BEGINNING, ALL LYING WITHIN DUPAGE COUNTY, ILLINOIS.

SAID PART CONTAINS 0.007 ACRES (294 SQUARE FEET), MORE OR LESS.

#### COMMON ADDRESSES:

8 West Chicago Avenue  
Naperville, IL 60540

PIN: 07-13-436-012  
[part of]

