

**ENCROACHMENT LICENSE AGREEMENT**

**Address:**

506 S. Washington Street  
Naperville, IL 60540

**PIN:**

07-24-206-036  
[formerly PIN 07-24-206-001]

**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 \_\_\_\_\_, 2022 between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government (hereinafter “**Licensor**” or “**City**”) with an office located at 400 South Eagle Street, Naperville, Illinois 60540, Chicago Title Land Trust Company, Successor to BankFinancial, National Association, successor to Downers Grove National Bank as Trustee under Trust Agreement dated October 24, 1995 known as Trust No. 95-267 (hereinafter “**Licensee**”) with offices at Chicago Title and Trust 10 S. LaSalle Street, Suite 2750, Chicago, IL 60603, and Marguerite Novak as Trustee and sole current beneficiary of the Frank A. Novak Trust dated 1/15/08 and the Marguerite A. Novak Trust dated 1/15/08 (“**Current Beneficiary**”). Licensor, Licensee, and Current Beneficiary shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

## RECITALS

**WHEREAS**, Licensee owns the real estate which is legally described on **Exhibit A** (hereinafter “**Licensee’s Property**”) in trust for the benefit of the Frank A. Novak Trust dated 1/15/08 and the Marguerite A. Novak Trust dated 1/15/08; and

**WHEREAS**, Licensor owns the Washington Street right-of-way adjacent to the Licensee’s Property (hereinafter “**Licensor’s Property**”); and

**WHEREAS**, Licensor intends to construct certain improvements on Licensor’s Property including but not limited to replacement of the Washington Street Bridge and expansion of the Washington Street pavement (“hereinafter “**Licensor’s Improvements**”); and

**WHEREAS**, Licensee has dedicated additional right-of-way ranging between 0’ to 17.02’ along the frontage of the Licensee’s Property in order to accommodate the Licensor’s Improvements as depicted on the Site Plan attached as **Exhibit B**; and

**WHEREAS**, an existing parking lot and the existing monument sign on the Licensee’s property encroaches upon the Licensor’s Property due to the right-of-way dedication as depicted on **Exhibit B** and described on **Exhibit C** (hereinafter “**Encroachments**”); and

**WHEREAS**, Licensor has determined that, subject to strict compliance with the terms and conditions set forth herein, the Encroachments will not adversely impact the areas of Licensor’s Property where the Encroachments occur (hereinafter “**Encroachment Areas**”) or impair the public health, safety and welfare; and

**WHEREAS**, Licensee and Licensor consent and agree to such the Encroachments as described herein subject to the terms and conditions herein 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 in this .
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 allow the Encroachments 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 the Encroachments and the Encroachment Areas.
  - c. Exhibit C: A description of the Encroachments in the Encroachment Areas.
3. Except as otherwise provided herein, the 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 Areas for the purpose of maintaining, repairing and replacing thereon the 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 makes no warranty regarding use of the Encroachment Areas except as regards to the interest of Licensor as provided herein.
6. Licensee and Current Beneficiary accept the Encroachment Areas in their condition as of the Effective Date of this Agreement as Effective Date is defined in Paragraph 23 hereof.
7. Current Beneficiary 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 Areas and the existence or condition of the Encroachments. Current Beneficiary 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, the Encroachments, and the condition of the Encroachments and/or the Encroachment Areas, and any act or omission of Current Beneficiary, Current Beneficiary's agents or assigns, or any independent contractor acting on Current Beneficiary'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 and Current Beneficiary, 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 Current Beneficiary's insurance policies for general liability, automobile liability for any work or activities to be performed within the Encroachment Areas. Said additional insured endorsement coverage shall be primary and non-contributing as to the City and its officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City or its officers, officials, agents, employees or volunteers shall be excess of Current Beneficiary's insurance and shall not contribute with it. Current Beneficiary shall cause the City and its officers, agents, and employees, to be named as additional insureds by any contractor retained to perform work related to any of the Encroachment with insurance provisions as set forth above. Current Beneficiary agrees, and shall cause its contractors to agree, to waive subrogation rights which any insurer of either may acquire by virtue of payment of any loss and shall obtain any endorsement that may be necessary to effect such waiver of subrogation. Copies of additional insurance certificates and additional insured endorsements showing the policy limits and the coverage afforded the City's additional insureds shall be provided by the Current Beneficiary to the City prior to installation of any part of the Encroachments.
9. 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 unless terminated as provided herein.
10. Current Beneficiary shall maintain the Encroachment Areas in good repair and in a clean and sightly manner, free of obstructions and debris. Upon demand from Licensor, Current Beneficiary shall immediately correct any defect or remove any debris from the Encroachment Areas which, in the sole determination of Licensor, presents an unsightly or unsafe condition. Provided, however, nothing contained herein shall impose upon Licensor any duty or obligation to maintain the Encroachment Areas or to effect any repairs on the Encroachment. Licensor retains the right to enter upon the Encroachment Areas for any purpose related to Licensor's operations, including but not limited to removing or otherwise rendering safe the Encroachments or the Encroachment Areas when, in the sole determination of the Licensor, such action is necessary to protect the public health, welfare or safety. Current Beneficiary shall remain responsible for all expenses incurred by the Licensor in effecting said repairs or removing said debris from the Encroachment Areas as provided herein.

If Current Beneficiary directs Licensee to lease or rent all or any part of Licensee's Property to another entity or individual, Current Beneficiary agrees to include provisions in such lease or rental agreement that reflect the obligations set forth herein. Notwithstanding any such lease or rental agreement, Current Beneficiary shall at all times remain liable for Current Beneficiary's obligations set forth herein.

11. This License may be terminated by either party as follows:
  - a. Licensor may terminate this Agreement and the License granted herein as to all or a portion of the Encroachments upon not less than sixty (60) days' written notice if it determines that any of the Encroachments are not properly maintained; or the existence of any of the Encroachment presents a danger to the public's health, safety or welfare; or if it is determined by the City that any of the Encroachments interfere with or will potentially interfere with Licensor's use or proposed use of Licensor's Property; or if Current Beneficiary ceases using any of the Encroachment Areas for the Encroachments.
  - b. Licensee may terminate this Agreement and the License granted herein as to any of the Encroachments upon not less than sixty (60) days' written notice to Licensor.
12. If this Agreement is terminated as to any of the Encroachments, Current Beneficiary shall cause the removal thereof and shall restore the Encroachment Areas to substantially the same, or better, condition as of the Effective Date of this Agreement. If Current Beneficiary fails to cause such removal and restoration within sixty (60) days of termination of this Agreement and the License granted herein, Licensor shall have the right to remove the Encroachments and restore the Encroachment Areas as provided above. All costs of said removal and restoration shall be borne by Current Beneficiary 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, if payment in full of such bill is not timely made.
13. Upon not less than thirty (30) day notice from Licensor, Current Beneficiary shall temporarily move or relocate all or a portion of the Encroachments to permit work or other activity within the Encroachment Areas. Current Beneficiary assumes all risk in the location of the Encroachments and shall be responsible for removal or relocation of the Encroachments in the event that Licensor requires access to perform work within the Encroachment Areas. Licensor shall make reasonable efforts to avoid disturbance of the Encroachments.
14. 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.
15. 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 Current Beneficiary's favor rendered by a court of competent jurisdiction, or unless Licensor voluntarily dismisses any legal claim.

16. 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.
17. Notice: 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 pursuant to the provisions of this subsection.

For the Licensor:

City of Naperville  
400 S. Eagle Street  
Naperville, IL 60540  
Attention: Legal Department

For the Licensee:

Chicago Title and Trust  
10 S. LaSalle Street, Suite 2750  
Chicago, IL 60603

For the Current Beneficiary:

Marguerite Novak  
5600 Fairmont Avenue  
Downers Grove, IL 60516

18. A copy of this Agreement shall be recorded with the DuPage County Recorder.
19. 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.
20. 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.
21. 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.
22. The effective date (“**Effective Date**”) of this Agreement shall be the date on which it is fully executed by both parties.
23. The undersigned warrant and represent that they are authorized to execute this Encroachment License Agreement.

**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 \_\_\_\_\_, 2022.

(seal)

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

**CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TO BANKFINANCIAL,  
NATIONAL ASSOCIATION, SUCCESSOR TO DOWNERS GROVE NATIONAL BANK  
AS TRUSTEE UNDER TRUST AGREEMENT DATED OCTOBER 24, 1995 KNOWN AS  
TRUST NO. 95-267**

By: \_\_\_\_\_

[Print Name] \_\_\_\_\_

[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 \_\_\_\_\_ 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

**MARGUERITE A NOVAK AS TRUSTEE AND SOLE CURRENT BENEFICIARY OF THE FRANK A. NOVAK TRUST DATED 1/15/08 AND THE MARGUERITE A NOVAK TRUST DATED 1/15/08**

By: \_\_\_\_\_  
Marguerite Novak

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 Marguerite Nova 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

This instrument was prepared by the Legal Department, City of Naperville, 400 South Eagle Street, Naperville, Illinois 60540.

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

**PARCEL 1: THE SOUTH 30 FEET OF THE NORTH 40 FEET OF LOT 4 IN BLOCK 2 IN ELLSWORTH'S ADDITION TO THE TOWN OF NAPERVILLE, A SUBDIVISION OF PART OF SECTIONS 18 AND 19, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF SECTIONS 24 AND 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 19, 1853 AS DOCUMENT 6889, IN DUPAGE COUNTY, ILLINOIS.**

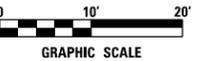
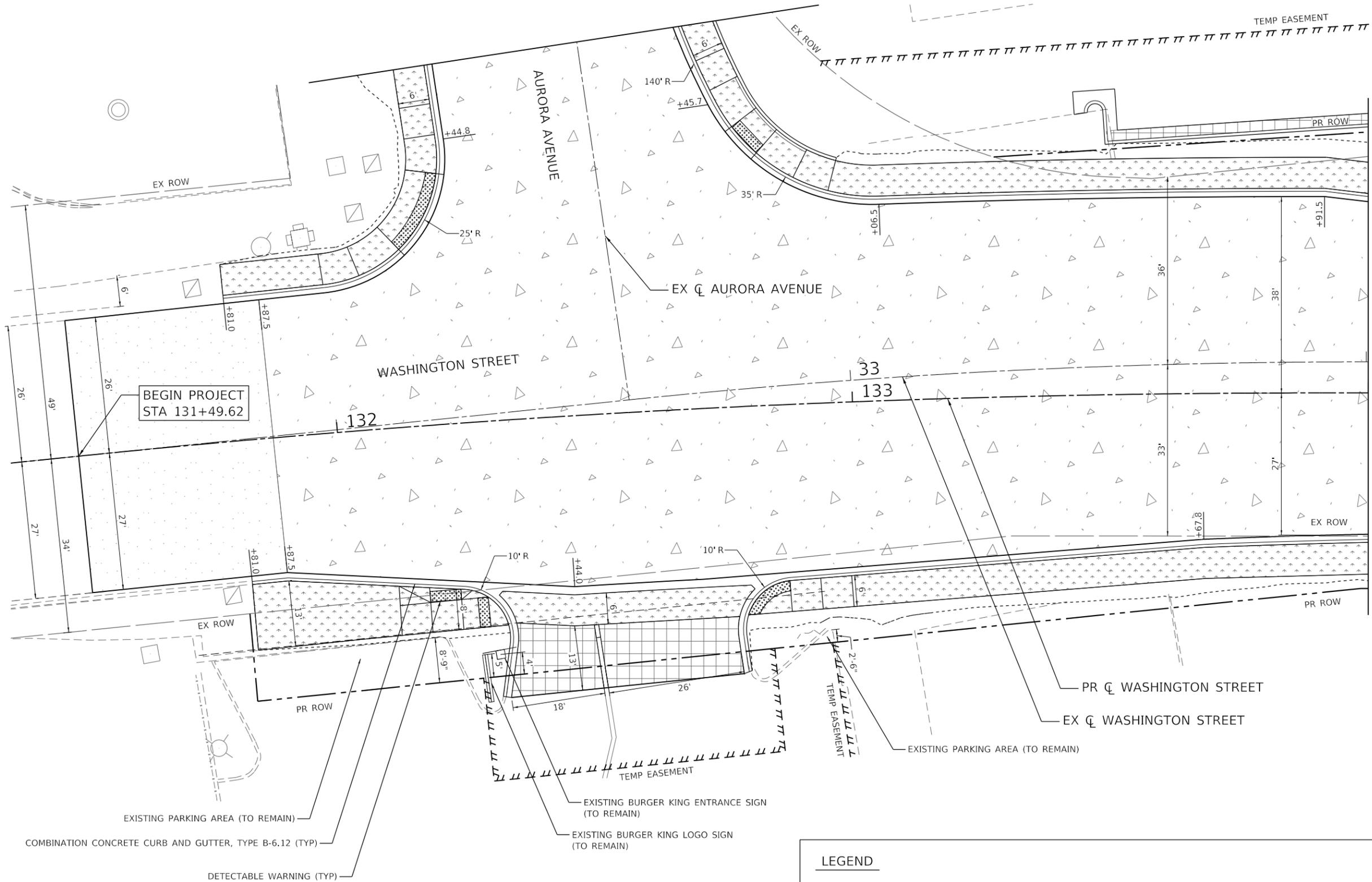
**PARCEL 2: LOT 4 (EXCEPT THE NORTH 40 FEET AS MEASURED ON THE WEST LINE THEREOF) AND ALL OF LOT 5 IN BLOCK 2 IN ELLSWORTH'S ADDITION TO TOWN OF NAPERVILLE, A SUBDIVISION IN SECTIONS 18 AND 19, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.**

**SITUATED IN THE COUNTY OF DUPAGE AND STATE OF ILLINOIS.**

**PERMANENT TAX NUMBER(S): 07-24-206-036**

#### **COMMON ADDRESSES:**

506 S. Washington Street  
Naperville, IL 60540



**LEGEND**

- PCC SIDEWALK 5 INCH  
SUBBASE GRANULAR MATERIAL, TYPE B, 2"
- PCC DRIVEWAY PAVEMENT, 8 INCH  
SUBBASE GRANULAR MATERIAL, TYPE B, 2"
- 2.0" - POLYMERIZED HMA SURFACE COURSE, MIX "E", IL-9.5, N70
- 2.25" - POLYMERIZED HMA BINDER COURSE, IL-19.0, N90
- 6.5" - HMA BASE COURSE
- 12.0" - AGGREGATE SUBGRADE IMPROVEMENT
- 2.0" - POLYMERIZED HMA SURFACE COURSE, MIX "E", IL-9.5, N70
- 2.25" - POLYMERIZED HMA BINDER COURSE, IL-19.0, N90

MODEL: 1408161.MXD  
 FILE NAME: 1408161.Dwg  
 PLOT DATE: 10/05/20

USER NAME = Roadway	DESIGNED - TBH	REVISED -
	DRAWN - VZ	REVISED -
PLOT SCALE = 20.0000' / in.	CHECKED - DD	REVISED -
PLOT DATE = 10/05/20	DATE - 10/05/20	REVISED -

<b>WASHINGTON STREET BRIDGE SITE PLAN</b>	
SCALE: 1" = 20'	SHEET 1 OF 1 SHEETS
STA. 128+01.51	TO STA. 134+00.00

F.A.U. RTE.	SECTION	COUNTY	TOTAL SHEETS	SHEET NO.
2552	16-00167-00-BR	DUPAGE	1	1
CONTRACT NO. 61G82				
FED. ROAD DIST. NO.	ILLINOIS	FED. AID PROJECT		

## EXHIBIT C

### DESCRIPTION OF LICENSEE'S ENCROACHMENT IN LICENSOR'S ROW

PARKING LOT: The existing asphalt parking lot will encroach into Licensor's Right-of-Way by approximately 2.5' to 8.8' and the existing monument sign will encroach into Licensor's Right-of-Way by approximately 5'.