

**ENCROACHMENT LICENSE
AGREEMENT**

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

LICENSEE: 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

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

(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 (herein “**Licensor**” or “**City**”) with an office located at 400 South Eagle Street, Naperville, Illinois 60540, and John W. Feldott as Successor Trustee under Trust Agreement dates November 13, 1996, as restated June 28, 2016, and known as the Donald A. Feldott Trust (herein “**Licensee**”) with an address of 2857 Bond Circle, Naperville, IL 60563. Licensor and Licensee shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

RECITALS

1. **WHEREAS**, Licensee owns the real estate which is legally described on **Exhibit A** (hereinafter “**Licensee’s Property**”); and

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

3. **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

4. **WHEREAS**, Licensee has dedicated additional right-of-way ranging between nine feet (9’) to eleven feet (11’) along the frontage of Licensee’s Property in order to accommodate Licensor’s Improvements as depicted on the Site Plan attached as **Exhibit B**; and

5. **WHEREAS**, one parking space on the Licensee’s property encroaches upon the Licensor’s Property between three feet (3’) to five feet (5’) due to the right-of-way dedication. Said encroachment is depicted on **Exhibit B** and described on **Exhibit C** (hereinafter “**Licensee’s Encroachment**”); and

6. **WHEREAS**, Licensor has determined that, subject to strict compliance with the terms and conditions set forth herein, including but not limited to the rights of the Parties to terminate this Agreement and the License granted herein, Licensee’s Encroachment will not adversely impact the area of Licensor’s Property where the Licensee’s Encroachment occurs (hereinafter “**Encroachment Area**”) or impair the public health, safety and welfare; and

7. **WHEREAS**, Licensee and Licensor consent and agree to Licensee’s Encroachment 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 Section 1.
2. To the extent of its authority, and subject to the provisions set forth herein, Licensor hereby grants to Licensee, and Licensee's successors and assigns, a nonexclusive and revocable license for the benefit of Licensee's Property to allow Licensee's Encroachment 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 part hereof:
 - a. Exhibit A: The legal description of Licensee's Property.
 - b. Exhibit B: A Site Plan that depicts Licensee's Encroachment and the Encroachment Area. A private parking space sign may be installed by Licensee to be located solely on Licensee's Property. Owner and City Engineer shall confer regarding placement prior to installation.
 - c. Exhibit C: A description of Licensee's Encroachment in the Encroachment Area.
3. The City acknowledges that subject to the provisions of this Agreement, Licensee's Encroachment complies with all applicable provisions of the Naperville Municipal Code. Going forward Licensee's Encroachment shall be required to comply with the applicable provisions of the Naperville Municipal Code as amended from time to time.
4. The License herein granted shall be limited to the use of the Encroachment Area by Licensee, and Licensee's invitees, for the purpose of allowing Licensee's Encroachment within the Encroachment Area and for the purpose of maintaining, repairing and replacing Licensee's Encroachment within the Encroachment Area.
5. The Parties agree that this grant of License to encroach shall not modify or remove requirements established in the public right-of-way or 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 Licensee's right to use the Encroachment Area except as regards to the interest of Licensor as provided herein.
6. As part of the Washington Street Bridge Replacement Project, Licensor will be regrading portions of Washington Street as well as Licensee's Property. Licensee agrees to accept the Encroachment Area **AS-IS** upon completion of the Washington Street Bridge Replacement Project.
7. **DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS.** Licensee assumes all liability and shall defend, indemnify, hold harmless and compensate Licensor and its officers, agents, and employees for any injury or damage to person or property caused by or arising in connection with the use of the above described Encroachment Area and the existence or condition of Licensee's Encroachment. 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 Licensee's Encroachments and/or the Encroachment Areas, 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, 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 insurance policies for general liability, automobile liability for any work or activities to be performed within the Encroachment Area. 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 Licensee's insurance and shall not contribute with it. Licensee 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 Licensee's Encroachment with insurance provisions as set forth above. Licensee 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 Licensee to the City prior to installation of any part of Licensee's Encroachment.
9. The rights and obligations set forth in this Agreement are binding on the Parties and their successors, heirs, assigns, and transferees unless terminated as provided herein.
10. Licensee shall maintain the Encroachment Area in good repair and in a clean and sightly manner, free of obstructions and debris. Upon demand from Licensor, Licensee shall immediately correct any defect or remove any debris from the Encroachment Area which, in the sole determination of Licensor, presents an unsightly or unsafe condition.
 - 10.1 Licensor retains the right to enter upon the Encroachment Area for any purpose related to Licensor's business, including but not limited to removing or otherwise rendering safe Licensee's Encroachment or the Encroachment Area when, in the sole determination of the Licensor, such action is necessary to protect the public health, welfare or safety. Licensee shall be responsible for all expenses incurred by the Licensor in effecting said repairs or removing debris from the Encroachment Area. Notwithstanding the foregoing, nothing contained herein shall impose upon Licensor any duty or obligation to maintain the Encroachment Area or to effect any repairs on Licensee's Encroachment.

11. This Agreement may be terminated by either Party as follows:

11.1 Licensor may terminate this Agreement and the License granted herein upon not less than sixty (60) days' written notice if it determines that: (i) Licensee's Encroachment is not properly maintained or that the existence of Licensee's Encroachment presents a threat of danger to the public health, safety or welfare if said condition is not cured to the satisfaction of the City Engineer within sixty-five (65) days (or such other timeframe as agreed to in writing by the City Engineer) after written notice is given by Licensor to Licensee pursuant to the notice provisions set forth in Section 17 hereof; (ii) if it is determined by the City that Licensee's Encroachment interfere with, or will potentially interfere with, Licensor's use or proposed use of Licensor's Property; or (iii) if Licensee ceases using the Encroachment Area for Licensee's Encroachment. With respect to (ii) above, the City agrees that termination, or partial termination, on that basis shall occur only in the event that a new City project requires reduction or elimination of the Encroachment Area and provides evidence that an alternative approach is not viable. Any such termination shall be taken only after good faith efforts by the City to preserve the parking space.

11.2 Licensee may terminate this Agreement and the License granted herein as to any of Licensee's Encroachments upon not less than sixty (60) days' written notice to Licensor.

12. If this Agreement is terminated by either Licensor or Licensee, Licensee shall cause the removal of Licensee's Encroachment and shall restore the Encroachment Area to substantially the same, or better, condition as of the Effective Date of this Agreement. If Licensee fails to cause such removal and restoration within sixty (60) days of termination of this Agreement, Licensor shall have the right to remove Licensee's Encroachment and restore the Encroachment Area. All costs of said removal and restoration 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, if payment in full of such bill is not timely made.

13. Upon not less than seven (7) days' notice from Licensor, Licensee agrees to prohibit use of the parking space which is the subject of this Agreement so that Licensor can undertake any needed repair or maintenance that affects the Encroachment Area. As soon as said work is concluded, Licensor shall give notice to Licensee that Licensee may resume use of the parking space.

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 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 Licensee'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. 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 LICENSOR/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

NOTICES TO LICENSEE

John W. Feldott
2857 Bond Circle
Naperville, IL 60563

With a copy to:

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

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. Additionally, the following provisions of this Agreement shall survive the termination of this Agreement: 1, 3, 5, 6, 7, 9, 10.1, 12, 14, 15, 16, 19, 20, and 21.
21. If any term of this Agreement is ambiguous, it shall not be construed for or against either 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.

/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 _____, 2022.

(seal)

Notary Public

LICENSEE/ John W. Feldott as Successor Trustee under Trust Agreement dates November 13, 1996, as restated June 28, 2016, and known as the Donald A. Feldott Trust

By: _____
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

This Agreement was prepared by the Naperville Legal Department, 400 South Eagle Street, Naperville, IL 60540

PART OF THE SE1/4 OF SECTION 13, TWP. 38 N., R. 9 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.

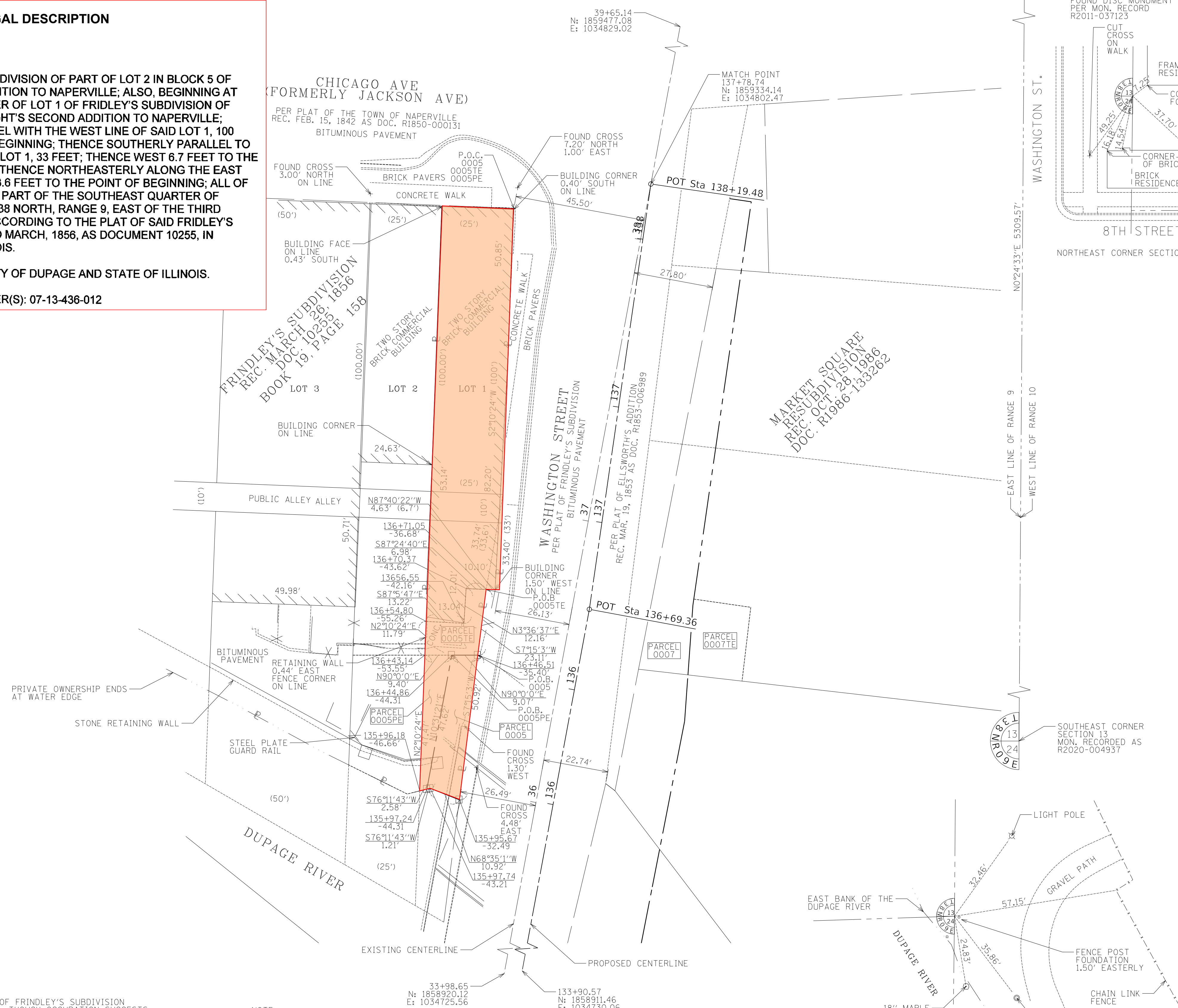
PARCEL NUMBER	TOTAL HOLDINGS ACRES	PART TAKEN ACRES	AREA IN EXISTING R.O.W. ACRES	REMAINDER AREA ACRES	EASEMENT AREA		PARCEL INDEX NUMBER	OWNER
					ACRES	SQUARE FEET		
0005 0005PE 0005TE	0.106	0.012 507 SQ. FT.		0.094	0.006 0.007	279 294	07-13-436-012	DONALD A. FELDTT AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1996, AS REINSTATED JUNE 28, 2016, AND KNOWN AS THE DONALD A. FELDTT TRUST

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



LEGEND

SECTION CORNER (Diagram of section corner)

QUARTER SECTION CORNER (Diagram of quarter section corner)

SECTION / QUARTER SECTION LINE (Diagram of line style)

PLATTED LOT LINES (Diagram of line style)

PROPERTY (DEED) LINE (Diagram of line style)

APPARENT PROPERTY LINE (Diagram of line style)

EXISTING CENTERLINE (Diagram of line style)

PROPOSED CENTERLINE (Diagram of line style)

EXISTING RIGHT OF WAY LINE (Diagram of line style)

PROPOSED RIGHT OF WAY LINE (Diagram of line style)

EXISTING EASEMENT (Diagram of line style)

PROPOSED EASEMENT (Diagram of line style)

EXISTING ACCESS CONTROL LINE (Diagram of line style)

PROPOSED ACCESS CONTROL LINE (Diagram of line style)

MEASURED DIMENSION (Diagram of dimension line)

COMPUTED DIMENSION (Diagram of dimension line)

RECORDED DIMENSION (Diagram of dimension line)

EXISTING BUILDING (Diagram of building outline)

BEARINGS AND COORDINATES ARE REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD83 (2011 ADJUSTMENT), EAST ZONE.

IRON PIPE OR ROD FOUND (Symbol)

CUT CROSS FOUND OR SET (Symbol)

***MAG NAIL SET** (Symbol)

5 / 8" REBAR SET (Symbol)

STAKING OF PROPOSED RIGHT OF WAY, SET DIVISION OF HIGHWAYS SURVEY MARKER TO MONUMENT THE POSITION SHOWN, IDENTIFIED BY INSCRIPTION DATA AND SURVEYORS REGISTRATION NUMBER. (Symbol)

STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS, BURIED 5/8 INCH METAL ROD 20 INCHES BELOW GROUND TO MARK FUTURE SURVEY MARKER POSITION IDENTIFIED BY COLORED PLASTIC CAP BEARING SURVEYORS REGISTRATION NUMBER. (Symbol)

PERMANENT SURVEY MARKER, I.D.O.T. STANDARD 2135 (TO BE SET BY OTHERS) (Symbol)

RIGHT OF WAY STAKING PROPOSED TO BE SET (Symbol)

GRAPHIC SCALE (Diagram of scale bar)

SCALE: 1" = 20'

BEARINGS AND COORDINATES ARE REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD83 (2011 ADJUSTMENT), EAST ZONE.

- IRON PIPE OR ROD FOUND
- ⊕ *MAG NAIL SET
- + CUT CROSS FOUND OR SET
- 5 / 8" REBAR SET
- STAKING OF PROPOSED RIGHT OF WAY, SET DIVISION OF HIGHWAYS SURVEY MARKER TO MONUMENT THE POSITION SHOWN, IDENTIFIED BY INSCRIPTION DATA AND SURVEYORS REGISTRATION NUMBER.
- M STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS, BURIED 5/8 INCH METAL ROD 20 INCHES BELOW GROUND TO MARK FUTURE SURVEY MARKER POSITION IDENTIFIED BY COLORED PLASTIC CAP BEARING SURVEYORS REGISTRATION NUMBER.
- ⊙ PERMANENT SURVEY MARKER, I.D.O.T. STANDARD 2135 (TO BE SET BY OTHERS)
- RIGHT OF WAY STAKING PROPOSED TO BE SET

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

THIS IS TO CERTIFY THAT I, ZACHARY N. RAWLINGS, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HAVE SURVEYED THE PLAT OF HIGHWAYS SHOWN HEREON IN SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PLAT CORRECTLY REPRESENTS SAID SURVEY, THAT ALL MONUMENTS FOUND AND ESTABLISHED ARE OF PERMANENT QUALITY AND OCCUPY THE POSITIONS SHOWN THEREON AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, MADE FOR THE DEPARTMENT OF TRANSPORTATION, STATE OF ILLINOIS.

DATED AT NAPERVILLE, ILLINOIS THIS 7 DAY OF JANUARY, 2019 A.D.

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3934
 LICENSE EXPIRATION DATE: NOVEMBER 30, 2020
 FIELD WORK COMPLETED: 1/4/2019
 THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

benesch
engineers · scientists · planners

Alfred Benesch & Company
35 West Wacker Drive, Suite 3300
Chicago, Illinois 60601
312-565-0450
Design Firm License # 184.000882

PARCEL PLAT
CITY OF NAPERVILLE
WASHINGTON STREET
BRIDGE RECONSTRUCTION

LIMITS: AURORA AVE TO CHICAGO AVE COUNTY: DUPAGE
SECTION: _____ JOB NO.: 10557
STA. 135+95.67 TO STA. 136+71.05
SCALE: 1"=20' SHEET 1 OF 1 SHEETS

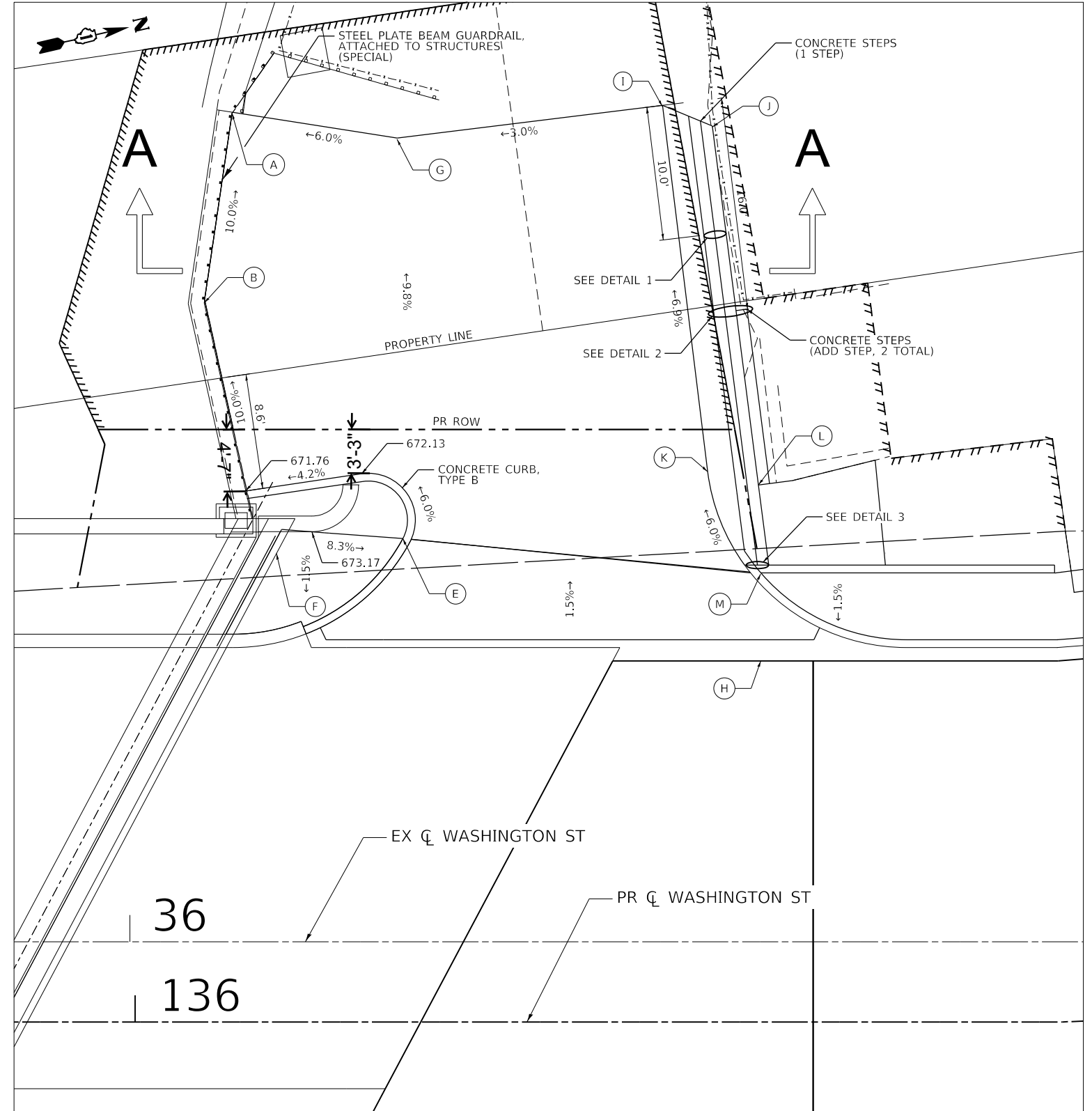
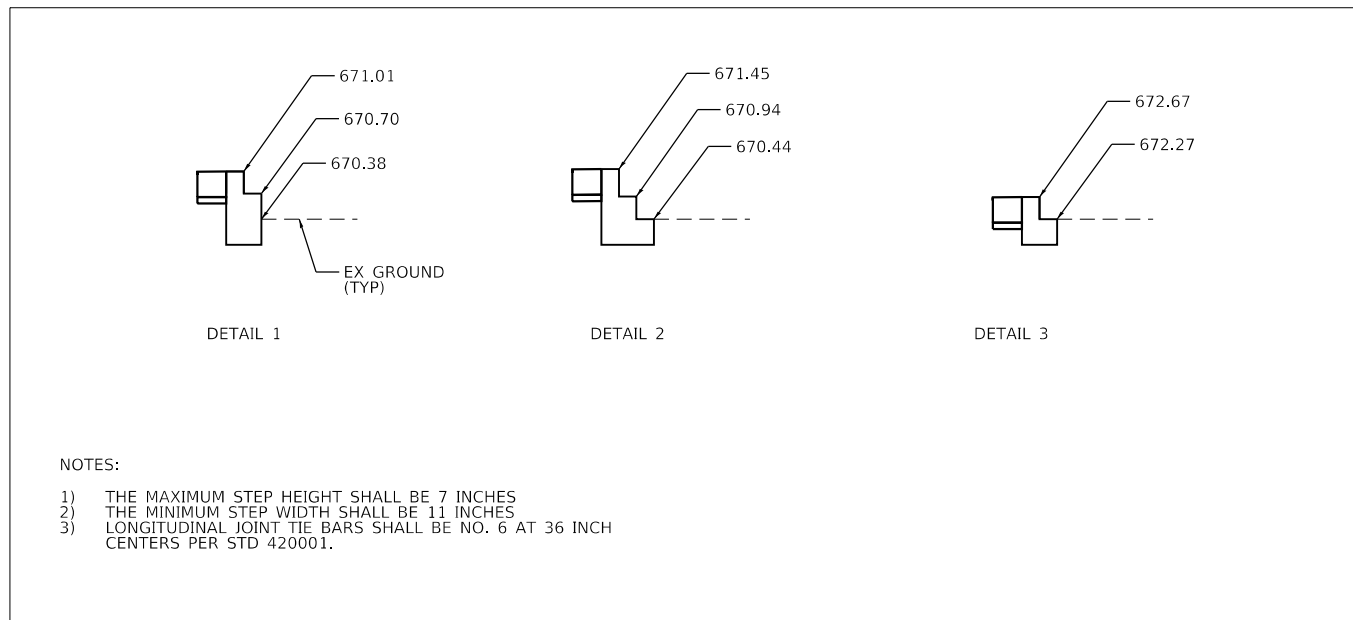
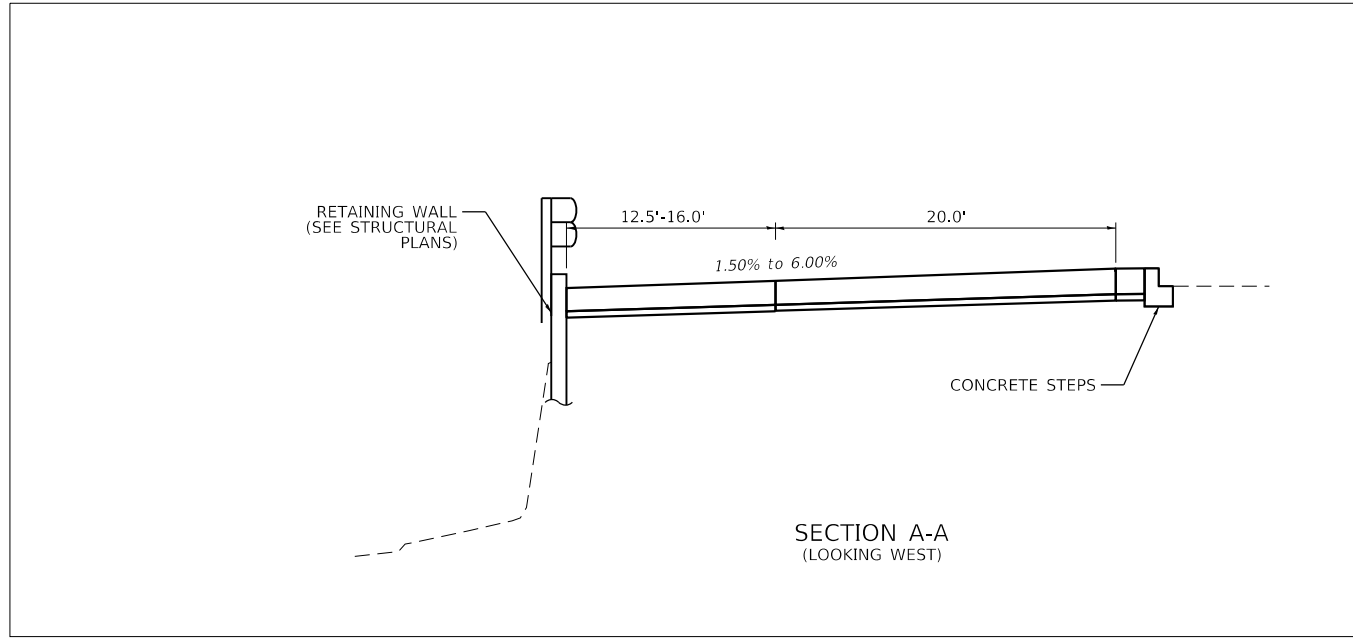
CITY OF NAPERVILLE
400 SOUTH EAGLE STREET
NAPERVILLE, ILLINOIS 60540

NOTE:
ALLEY APPEARS ON PLAT OF FRIDLEY'S SUBDIVISION RECORDED AS DOC. 10255, THOUGH OCCUPATION SUGGESTS VACATION, NO VACATION DOCUMENT HAS BEEN FOUND.

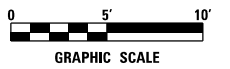
TITLE COMMITMENT NO. BEN-2018-DP-4708.0 DATED AUGUST 21, 2018

NOTE:
ALL DIMENSIONS ARE MEASURED UNLESS OTHERWISE SPECIFIED.
BEARINGS AND DISTANCES SHOWN HEREON ARE ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983 (2011 ADJUSTMENT) "GRID".
ALL MEASURED AND CALCULATED DISTANCES ARE "GRID" NOT "GROUND". TO OBTAIN GROUND DISTANCES, DIVIDE GRID DISTANCES BY THE COMBINATION FACTOR OF 0.99995095.
AREAS SHOWN ON THIS PLAT ARE "GROUND".

REVISION DATE: REVISION MADE BY:



POINT	STATION	OFFSET	ELEVATION	POINT	STATION	OFFSET	ELEVATION
A	136+07.3	67.96	668.86	H	136+46.8	27.00	672.56
B	136+05.2	53.78	670.32	I	136+39.5	68.56	670.28
C	136+07.2	44.89	671.25	J	136+43.2	67.01	670.32
D	136+18.4	44.36	671.63	K	136+42.8	41.16	672.19
E	136+20.0	36.15	672.6	L	136+46.6	40.17	671.46
F	136+10.6	35.04	673.44	M	136+46.8	33.51	672.71
G	136+19.6	66.11	669.65				



MODEL: 1400BELNAMES
 FILE NAME: N:\PROJ\020794\01\Drawings\Detail\020794-01-rdwy_dwg_NW_Qtab.dgn

EXHIBIT C

DESCRIPTION OF LICENSEE'S ENCROACHMENT IN LICENSOR'S ROW

PARKING LOT: The proposed asphalt parking lot will encroach into Licensor's Right-of-Way by approximately 3.2' to 4.6'.