

GRANTOR: CR River Square, LLC

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

PROPERTY ADDRESS:

22 E. Chicago Avenue
Naperville, IL 60540

P.I.N.S

07-13-437-006 [part of]
08-18-327-017 [part of]

Return to:

City Clerk
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

Above space reserved for Recorder

GRANT OF PERMANENT EASEMENT

[Part of 22 E. Chicago Avenue, Naperville, IL]

This agreement for a GRANT OF A PERMANENT EASEMENT (“Agreement”) is entered into by and between CR River Square, LLC, a Delaware limited liability company which is authorized to conduct business in the State of Illinois, with offices located at 230 Park Avenue, 12th Floor, New York, New York 10169 (herein the “**Grantor**”) 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 (herein the “**City**”), with an address of 400 South Eagle Street, Naperville, IL 60540. Grantor and the City 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 in conjunction with the Illinois Department of Transportation (“**Project**”) and
- B. **WHEREAS**, Grantor is the fee simple owner of certain real property and all improvements located thereon located at 22 E. Chicago Avenue, Naperville, IL, PINS: 07-13-437-006

and 08-18-327-017 depicted on Exhibit A, and legally described on Exhibit B (the “Property”):

C. **WHEREAS**, the City has determined that it is necessary and in the public interest to acquire a permanent easement in 0.022 acres of the Property located on the northwest corner of the Property as depicted on Exhibit A and legally described on Exhibit B (hereinafter the “**Permanent Easement Premises**”) which will be used by the City for the Project as provided herein, and Grantor has agreed to grant the City said Permanent Easement on the Permanent 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 PERMANENT EASEMENT

2.1 Grant of Permanent 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 non-exclusive permanent easement (“**Permanent Easement**”) over, upon, under, through, and across the Permanent Easement Premises for the purposes of providing a public sidewalk, traffic signal posts and ancillary equipment thereto, and electric, water, storm, and sanitary sewer utilities provided by the City and by public utility companies, for utility transmission and distribution systems and community antennae television systems operating under franchise or contract with the City (the “**Utilities**”), for the perpetual right, privilege and authority to install, survey, construct, reconstruct, repair, inspect, maintain and operate such Utilities together with any necessary manholes, catchbasins, connections, appliances, and other structures and appurtenances as may be deemed necessary by the City. Said Permanent Easement includes a grant to the City, and any of the City’s officers, agents, representatives, employees, contractors, licensees, successors, or assigns the right, privilege and authority to enter upon the Permanent Easement Premises, either by vehicle or on foot, together with the necessary workers and equipment to do any of the work described herein. The right is also granted to the City to trim or remove any trees, shrubs or other plants on the Permanent Easement Premises that may interfere with the foregoing Permanent Easement purposes. The foregoing is collectively referenced herein as the “**Work**”. Notwithstanding the foregoing, and while Grantor acknowledges that components of the Utilities, including but not limited to the traffic signal posts will be above ground, the City acknowledges and agrees that the purpose of the Work for which the Permanent

Easement is granted is to improve function and appearance of the roadway and the public sidewalk, and as such the Utilities shall be, to the extent reasonably practicable, located underground or in such a manner that the Utilities will not interfere with the use of the public sidewalk or the visibility of the Property.

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 Permanent Easement on the Permanent 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 eighty-five thousand dollars (\$85,000), 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 Permanent Easement Premises.

4.1.2 It has the sole authority to grant the Permanent Easement on the Permanent Easement Premises as described herein. As to any tenant/lessee having rights in the Permanent Easement Premises or who would, pursuant to their applicable lease, have a right to approve or consent to this transaction, if any, Grantor shall provide the City with fully executed copies of tenant and lessee releases (or Estoppel Certificates) with respect to the Permanent Easement granted herein prior to City payment of the consideration described herein; and

4.1.3 The Permanent 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 Permanent Easement Premises are not the subject of any environmental action, inquiry, or investigation.

5. DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS.

5.1 Grantor. 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 Permanent Easement on the Permanent 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 Permanent Easement Premises which would prohibit or prevent this grant of Permanent Easement, 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.

5.2 City. Except for the negligent and willful misconduct of the Grantor and its officers, members, managers, principals, beneficiaries, employees, agents, affiliates, parent companies,

subsidiaries, affiliates, 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 City or its agent's use of the Permanent Easement Premises , provided that in the event that any such claims or causes of actions are asserted against Indemnitees, Indemnitees shall immediately furnish the City with written notification thereof. The City shall be liable for any injury or damage caused to any persons or property to the extent caused by the City or any of its employees, agents, invitees, licensees, or contractors in the performance of the Work.

6. INSURANCE.

6.1 The Work performed by the City hereunder shall be done and performed solely at the City's own risk, and it is understood and agreed by the parties that the City is not an agent or employee of Licensor. Before commencing the Work hereunder, the City shall cause its contractor(s) to maintain sufficient insurance over the Permanent Easement Premises and shall furnish to Licensor certificates issued by the company or companies issuing such insurance evidencing that sufficient insurance is in full force and effect. The certificates shall contain the following provisions:

6.1.1 Name Grantor and Grantor's agents and beneficiaries as additional insureds (excluding Workmen's Compensation);

6.1.2 In the event of any change in the limits of liability, decrease in coverage or other material change in coverage, or the cancellation of insurance in its entirety, the insurer must give Licensor, Licensor's agents and beneficiaries and all named additional insureds or loss payees, written notice at least thirty (30) days prior to the effective date of such change or cancellation, and insurance coverage shall remain in force during said period; and

6.1.3 Waiver of any right of subrogation of the insurers against Licensor, Licensor's agents or beneficiaries and all named additional insureds or loss payees.

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 Invalidity. 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. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party rising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees and any other professional fees resulting therefrom.

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. All notices required under this Agreement shall be served upon the Parties via First Class U.S. Mail as follows:

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

NOTICES TO THE GRANTOR

CR River Square, LLC
230 Park Avenue, 12th Floor
New York, New York 10169

c/o Mid-America Asset Management, Inc.
Attn: John Fontaine
One Parkview Plaza, 9th Floor
Oakbrook Terrace, IL 60108

With a copy to:

Audrey E. Gamble, Esq.
SATC/Law Attorneys at Law
222 West Adams Street, Suite 3050
Chicago, IL 60606-5312
agamble@satclaw.com

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: Sections 2.1, 4.1 and each subsection thereof, 5.1, 5.2, 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. The City shall be solely responsible for recording this Agreement and all costs associated there with.

7.12 Lender Ratification. Attached as Exhibit C is the consent of Owner's mortgagee ("**Lender**") to this Agreement.

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/ CR River Square, LLC

**By: Clarion Retail REIT I, LLC,
its Managing Member**

By: Clarion Retail, L.P

**By: Clarion Retail GP, LLC
its general partner**

By: _____

Name: _____

Its: _____

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by _____
and _____ this ____ day of _____, 2022.

Given under my hand and official seal this ____ day of _____, 2022.

Notary Public

Seal

Print Name

My Commission Expires: _____

GRANTEE: CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

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

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager, and Pam Gallahue, City Clerk this ____ day of _____, 2022.

Given under my hand and official seal this ____ day of _____, 2022.

Notary Public

Seal

Print Name

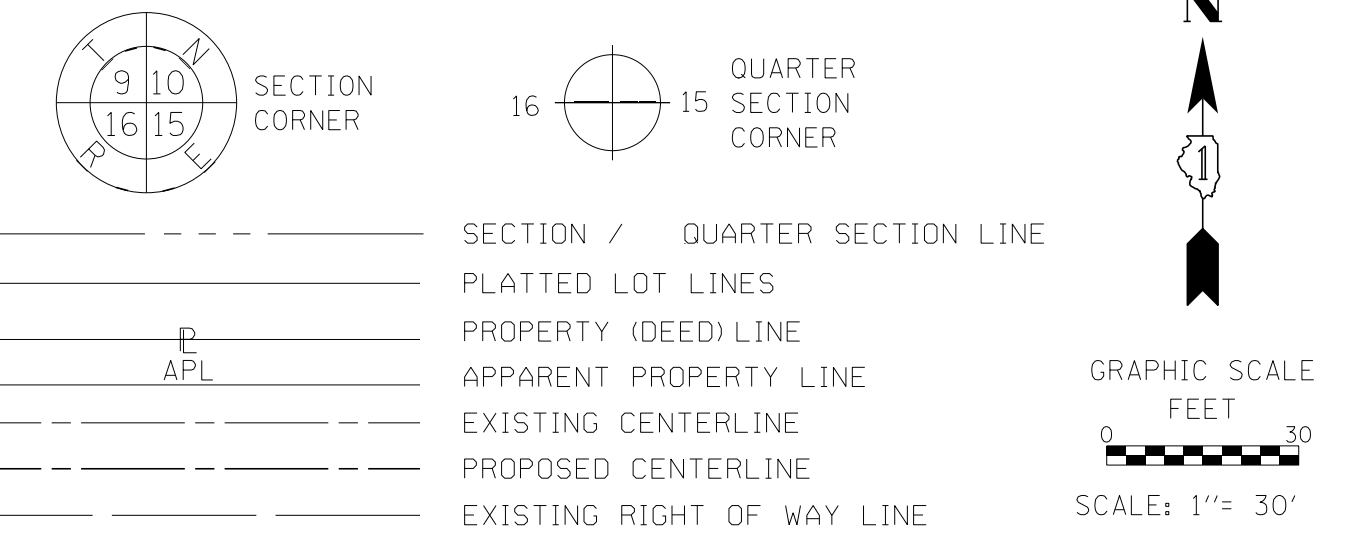
My Commission Expires: _____

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. PART OF THE SW1/4 OF SECTION 18, TWP. 38 N., R. 10 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.

Table with 8 columns: PARCEL NUMBER, TOTAL HOLDINGS ACRES, PART TAKEN ACRES, AREA IN EXISTING R.O.W. ACRES, REMAINDER AREA ACRES, EASEMENT AREA ACRES/SQUARE FEET, PARCEL INDEX NUMBER, OWNER.

LEGEND



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

- IRON PIPE OR ROD FOUND
CUT CROSS FOUND OR SET
STAKING OF PROPOSED RIGHT OF WAY...
STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS...
PERMANENT SURVEY MARKER...
RIGHT OF WAY STAKING PROPOSED TO BE SET

STATE OF ILLINOIS)
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...

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. 136+51.92 TO STA. 38+65.54
SCALE: 1"=30' SHEET 1 OF 1 SHEETS

CITY OF NAPERVILLE
400 SOUTH EAGLE STREET
NAPERVILLE, ILLINOIS 60540

PROJECT COORDINATES
ILLINOIS STATE PLANE, EAST ZONE, NAD83 (2011)

EXISTING WASHINGTON STREET
STATION NORTHING EASTING DESCRIPTION
31+08.88 1858632.14 1034694.83 START
32+59.88 1858782.63 1034707.19 PC
33+29.32 1858851.84 1034712.88 PI
33+98.65 1858920.12 1034725.56 PT
36+65.14 1859477.08 1034829.02 END

PROPOSED WASHINGTON STREET
STATION NORTHING EASTING DESCRIPTION
131+08.88 1858632.14 1034694.83 START
131+49.63 1858672.75 1034698.17 PC
132+70.20 1858792.92 1034708.04 PI
133+90.57 1858911.46 1034730.06 PT
136+69.36 1859185.57 1034780.97 POT
138+19.48 1859334.14 1034802.47 END

SECTION CORNERS
CORNER NORTHING EASTING
13-NE 1863947.51 1029662.15
13-NW 1864118.74 1035043.85
13-S-1/4 1858721.50 1032274.82
13-SE 1858809.30 1035005.94

PARCEL COORDINATES
STATION OFFSET NORTHING EASTING
38+46.06 56.56 1859346.73 1034862.34
38+49.48 81.61 1859348.46 1034888.13
38+54.46 33.92 1859362.07 1034842.16
38+65.54 77.21 1859365.06 1034886.74
136+51.92 20.71 1859164.64 1034798.14
136+53.12 38.04 1859162.66 1034815.41
136+54.44 57.01 1859160.49 1034834.30
136+75.46 35.63 1859186.50 1034817.11
136+76.11 55.74 1859184.26 1034837.11
137+93.51 26.78 1859304.60 1034825.25
137+94.10 35.59 1859303.92 1034834.06
138+16.32 41.50 1859325.07 1034843.09
13676+00.00 35.59 1859187.04 1034817.15

EXISTING CENTERLINE
PROPOSED CENTERLINE
33+98.65
N: 1858920.12
E: 1034725.56
133+90.57
N: 1858911.46
E: 1034730.06

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".

NOTE: ELLSWORTH'S ADDITION RECORDED IN DUPAGE COUNTY MARCH 19, 1853 AS DOCUMENT R1853-006989
TITLE COMMITMENT NO. BEN-2018-DP-4709.0 DATED AUGUST 22, 2018



REVISION DATE: REVISION MADE BY:

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY

LOT 1 (EXCEPT THAT PART FALLING IN THE FOLLOWING DESCRIBED PROPERTY: THAT PART OF LOT 1 IN BLOCK 1 OF ELLSWORTH ADDITION TO THE TOWN OF NAPERVILLE, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID LOT; THENCE RUN SOUTHERLY ON THE WESTERLY LINE OF SAID LOT, 55 FEET; THENCE EAST ON THE SOUTH LINE OF SAID LOT, 34 FEET; THENCE NORTHERLY TO A POINT ON THE NORTH LINE OF SAID LOT, 25 FEET AND 6 1/2 INCHES FROM THE POINT OF BEGINNING; THENCE WEST ON THE NORTH LINE OF SAID LOT TO THE POINT OF BEGINNING) IN MARKET SQUARE RESUBDIVISION PLAT OF PART OF THE SOUTHEAST 1/4 OF THE SOUTH EAST 1/4 OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 28, 1986 AS DOCUMENT R86-133262, IN DUPAGE COUNTY, ILLINOIS.

SITUATED IN THE COUNTY OF DUPAGE AND STATE OF ILLINOIS.

PERMANENT TAX NUMBER(S): 08-18-327-017; 07-13-437-006

COMMON ADDRESS:
22 E. Chicago Avenue
Naperville, IL 60540

LEGAL DESCRIPTION OF PERMANENT EASEMENT

THAT PART OF LOT 1 IN MARKET SQUARE RESUBDIVISION, RECORDED OCTOBER 28, 1986 IN DUPAGE COUNTY AS DOCUMENT NUMBER 1986-133262, IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 38 NORTH, RANGE 10, 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:

BEGINNING AT A POINT ON THE NORTH LINE OF LOT 1 IN BLOCK 1 OF ELLSWORTH'S ADDITION, RECORDED MARCH 19, 1853 AS DOCUMENT R1853-006989, BEING ALSO THE SOUTH LINE OF CHICAGO AVENUE, LYING A RECORD DISTANCE 25.53 FEET EASTERLY OF THE NORTHWEST CORNER THEREOF AS MEASURED ALONG SAID NORTH LINE; THENCE NORTH 86 DEGREES 9 MINUTE 52 SECONDS EAST, 44.68 FEET ALONG SAID NORTH LINE; THENCE SOUTH 4 DEGREES 46 MINUTES 52 SECONDS EAST, 16.65 FEET; THENCE SOUTH 86 DEGREES 9 MINUTES 28 SECONDS WEST, 25.85 FEET; THENCE SOUTH 41 DEGREES 37 MINUTES 29 SECONDS WEST, 28.98 FEET ALONG THE EAST LINE OF WASHINGTON STREET; THENCE NORTH 1 DEGREE 26 MINUTES 5 SECONDS WEST, 37.01 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING, ALL LYING WITHIN DUPAGE COUNTY, ILLINOIS.

SAID PART CONTAINS 0.022 ACRES, MORE OR LESS.

COMMON ADDRESS:

22 E. Chicago Avenue Naperville, IL 60540

PINs: 08-18-327-017 & 07-13-437-006

[part of]