

**540 Frontenac Court
Naperville, Illinois 60563
P.I.N. 07-17-204-008 (Partial)**

**Return to: City Clerk
City of Naperville
400 South Eagle Street
Naperville, IL 60540**

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the “Agreement”) is entered into this ____ day of _____, 2018 between IPT Naperville DC LLC, with offices at 518 17th Street, 17th Floor, Denver, Colorado 80202 (“Developer”), and the City of Naperville, an Illinois municipal corporation, with offices at 400 South Eagle Street, P.O. 3020, Naperville, Illinois 60566-7020 (the “City”). Developer and the City are referred to herein individually as a “Party” and collectively as the “Parties,” as the context may require.

RECITALS

WHEREAS, Developer is the owner of certain real property commonly known as 540 Frontenac Court, Naperville, Illinois, legally described on Exhibit A attached hereto and made a part hereof (the “Developer Parcel”); and

WHEREAS, the City is the owner of certain real property commonly known as 535 Frontenac Court which property is located to the south of and abutting Developer Parcel and which is legally described on Exhibit B attached hereto and made a part hereof (the “City Parcel”); and

WHEREAS, Developer intends to improve the Developer Parcel with an industrial building, parking, loading, landscaping, storm water management facilities and other ancillary improvements; and

WHEREAS, the City Parcel does not have frontage on a public right of way; and

WHEREAS, the City intends to install a pump station in the right-of-way north of the Developer Parcel, south of North Aurora Road, and immediately east of the railroad right of way as depicted on Exhibit C attached hereto and made a part hereof; and

WHEREAS, in order to facilitate the development, use and operation of their respective properties and to ensure City access to the pump station, the Parties wish to grant each other certain easements as described more particularly herein.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Parties agree that:

1. RECITALS INCORPORATED. The foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though fully set forth in this Section 1.

2. EASEMENT GRANT BY THE CITY – STORM WATER DISCHARGE FACILITIES.

(a) The City hereby grants to Developer, its tenants and occupants of the Developer Parcel a non-exclusive, perpetual easement appurtenant for the laying, installation, connection, maintenance and repair of a storm water discharge pipe and related appurtenances (the “Storm Water Improvements”) over, under, across and through the City Parcel in the area depicted on Exhibit C and legally described in Exhibit D-1 attached hereto and made a part hereof (the “Developer Easement Area”). The

City reserves for itself, and for its successors and transferees, the right to continue to use and enjoy the Developer Easement Area provided that such use and enjoyment does not interfere with the rights granted pursuant to this Section 2.

- (b) The City hereby grants to Developer, its contractors and subcontractors, a temporary non-exclusive construction easement to access the City Parcel for the purpose of laying, installing and connecting the Storm Water Improvements. Following completion of such work, Developer shall promptly restore the surface of City Parcel to substantially similar condition as existing prior to accessing the City Parcel. The temporary construction easement granted by this Section 2(b) shall expire and be of no further effect without further action by either Party on the date that is two years after the Effective Date.
- (c) Upon installation and connection of the Storm Water Improvements by the Developer as provided herein, the Developer shall be solely responsible for the maintenance, repair and replacement of said Storm Water Improvements, including the costs and expenses thereof

3. EASEMENT GRANT BY THE DEVELOPER – PUMP STATION ACCESS.

- (a) Developer hereby grants to the City a non-exclusive, perpetual easement appurtenant over and across the Developer Parcel in the area depicted on Exhibit C and legally described in Exhibit D-2 attached hereto and made a part hereof (the “Pump Station Easement Area”) in order to permit vehicular access, together with City employees, contractors, subcontractors and consultants access, to and from the City’s pump station improvements depicted on Exhibit C. Developer reserves for itself, and for its successors, tenants and transferees, the right to continue to use and

enjoy the Pump Station Easement Area provided that such use and enjoyment does not interfere with the rights granted pursuant to this Section 3.

- (b) Developer shall be solely responsible for the maintenance, repair and replacement of the improvements in the Pump Station Easement Area, including the costs and expenses thereof, as and when required in accordance with standard and reasonable practices for similar facilities; provided, however, that the City shall be responsible for repairing damage to landscaping or improvements caused as a result of its use and enjoyment of the Pump Station Easement Area, ordinary wear and tear excepted. In the event of damage caused by the City's use of the Pump Station Easement Area, Developer shall notify the City of the conditions which require repair and the City shall repair such damages within thirty (30) business days or such additional period as may be reasonably necessary, but not longer than sixty (60) days unless the City Engineer and the Developer agree upon a different timeframe. If the City does not repair such damage within said timeframe, Developer shall be permitted to make the repairs and the City shall reimburse Developer for reasonable costs and expenses incurred by Developer. In the event that Developer does not perform its obligations pursuant to this Section 3(b) as and when required, the City shall have the right to notify Developer of the City's intent to undertake the necessary work on the Pump Station Easement Area improvements provided that any such notice shall include reasonable detail of the work required and the reasons for the necessity of same. If Developer does not perform the work set forth in the City's notice within fifteen (15) business days of the receipt of such notice (or such additional period as may be reasonably necessary,(but not longer

than sixty (60) days unless the City Engineer and the Developer agree upon a different timeframe), the City, its contractors and subcontractors shall have the right to come upon the Developer Parcel and perform the required work. Within thirty (30) days of completion of such work, the City shall submit detailed documentation of the costs and expenses of the work performed to Developer, and Developer shall promptly reimburse the City for such costs and expenses.

4. EASEMENT GRANT BY DEVELOPER – LOT 2 ACCESS.

- (a) Developer hereby grants to the owner of the City Parcel, its employees, tenants, occupants, contractors and invitees, a non-exclusive, perpetual easement appurtenant for vehicular ingress and egress over, across and through the Developer Parcel in the area depicted on Exhibit C and legally described in Exhibit D-3 attached hereto and made a part hereof (the “Access Easement Area”) in order to access to/from the City Parcel to/from the terminus of Frontenac Court. Developer reserves for itself, its successors, transferees, tenants and occupants the right to continue to use and enjoy the Access Easement Area provided that such use and enjoyment does not interfere with the rights granted pursuant to this Section 4.
- (b) Except as provided in Section 4(c) which provides for sharing of the costs of the maintenance of the Access Easement Area, Developer shall be solely responsible for the maintenance, repair and replacement of the improvements in the Access Easement Area, including the costs and expenses thereof, as and when required in accordance with standard and reasonable practices for similar improvements. In the event that Developer does not perform its obligations pursuant to this Section 4(b) as and when required during the period in which it is solely responsible for the

Access Easement Area, the City shall have the right to notify Developer of the City's intent to undertake the necessary work on Access Easement Area improvements provided that any such notice shall include reasonable detail of the work required and the reasons for the necessity of same. If Developer does not perform the work set forth in the City's notice within fifteen (15) days of the receipt of such notice (or such additional period as may be reasonably necessary, but not longer than sixty (60) days unless the City Engineer and the Developer agree upon a different timeframe), the City, its contractors and subcontractors shall have the right to come upon the Developer Parcel and perform the required work. Within thirty (30) days of completion of such work, the City shall submit detailed documentation of the costs and expenses of the work performed to the City, and the City shall promptly reimburse Developer for such costs and expenses.

- (c) Upon the use and occupancy of the City Parcel, the City shall be obligated to share the costs and expenses of the maintenance, repair and replacement of the improvements in the Access Easement Area on a pro-rata basis. The allocation of costs shall be based on average vehicle and truck trip generation on the Developer Parcel and the City Parcel. Trip generation shall be measured during the one-hour, peak operation period each day on each parcel, respectively, and averaged over a 15-day period. Such cost allocation shall be revised from time to time based on the same methodology (unless otherwise agreed to by the Parties) to equitably allocate costs and expenses based on the collective intensity and frequency of use by all owners, tenants and occupants of the Developer Parcel and City Parcel. Developer shall remain responsible for the maintenance, repair and replacement of the

improvements in the Access Easement Area notwithstanding the allocation of costs and expenses. Upon completion of any such work, Developer shall submit detailed documentation of the costs and expenses of the work performed to the City, and the City shall promptly reimburse Developer for its pro-rata share of such costs and expenses. In the event that Developer is not reimbursed within sixty (60) days of delivery of the cost and expense documentation, Developer shall have the right to lien the City Parcel, to the extent such action is permitted by law, and foreclose upon such lien in accordance with applicable mortgage law. Any such lien shall be subordinate to any first mortgage that encumbers the City Parcel.

5. THE CITY'S INDEMNITY FOR CLAIMS. The City agrees to indemnify and save Developer, its beneficiaries, officers, employees, agents (including collectively any of the foregoing persons of any affiliate of Developer), and tenants and occupants of the Developer Parcel (the "Developer Indemnitees") harmless from and against any and all liabilities, claims, loss, or demands for personal injury or property damage not including attorneys' fees and/or costs (collectively, "Developer Losses") arising out of or caused by any negligent act or omission of the City, any of its agents, contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising from the City's use of the Access Easement Area or the Pump Station Easement Area; provided, however, the City shall have no obligation to indemnify one or more of the Developer Indemnitees to the extent any Developer Losses arise from any negligent act, omission, or willful misconduct of one or more of the Developer Indemnitees. [

6. DEVELOPER'S INDEMNITY FOR CLAIMS. Developer agrees to indemnify and save the City, its beneficiaries, elected officials, employees, and agents (the "City

Indemnitees”) harmless from and against any and all liabilities, claims, loss, or demands for personal injury or property damage not including attorneys’ fees and/or costs (collectively, “City Losses”) arising out of or caused by any negligent act or omission of Developer, any of its agents, contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising from Developer’s use of the Developer’s Easement Area; provided, however, Developer shall have no obligation to indemnify one or more of the City Indemnitees to the extent any City Losses arise from any negligent act, omission, or willful misconduct of one or more of the City Indemnitees.

7. MECHANIC’S LIENS. Each Party covenants to the other Party and agrees not to suffer or permit any mechanic’s or materialmen’s liens or other liens arising from each Party’s performance of its construction and maintenance rights or responsibilities set forth in this Agreement to be placed against, or encumber, the other Party’s property. In such an event and upon receipt of notice of one or more liens, such Party shall promptly and diligently cause the release of any such lien and fully indemnify, defend and hold the other Party harmless from and against all costs and expenses related to any such liens.

8. REMEDIES. The Parties shall have all rights and remedies at law and in equity to enforce the terms of this Agreement. In the event that a Party shall fail to perform an obligation which such Party is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an event of default shall not be deemed to have occurred unless the alleged defaulting Party has failed to cure such default within thirty (30) days of its receipt of a written notice from the non-defaulting Party; provided, however, with respect to those alleged defaults which are not capable of being cured within such thirty (30) day period, the alleged defaulting Party shall not be deemed to have committed an event of default under this Agreement

if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

9. RUNNING OF BENEFITS AND BURDENS. The easements granted herein and the promises contained in this Agreement shall be covenants running with the land and shall be binding upon the City and Developer and any of their lessees, occupants, successors in interest, transferees, heirs, devisees and assigns from and after the date of execution by the Parties hereto; provided, however, (a) the City shall remain obligated to maintain the Storm Water Improvements nothing withstanding the sale or transfer of some or all of the City Parcel and (b) the rights and obligations set forth in Section 3 shall be personal to the City and shall not inure to the benefit of or be binding upon successors in title to the City. Such grants of easement are not intended, nor shall they be construed as, creating any rights in, or for the benefit of, the general public (except to the extent rights have been expressly granted to employees, tenants, occupants, contractors and invitees) or any property other than the Developer Parcel and the City Parcel, as applicable. Upon an alienation, sale or any other transfer of all or any portion of the Party's property (other than an assignment or transfer of rights pursuant to a mortgage or otherwise as collateral for any indebtedness) and solely with respect to the portion of the property so transferred, the transferor's obligations shall apply to the transferee of such property (and its beneficiaries if such transferee is a land trust) and the seller of transferor thereof (and its beneficiaries if such seller or transferor is a land trust) shall thereafter be released from any and all obligations or liability hereunder with respect to the portion of the property so transferred.

10. ENTIRE AGREEMENT. This instrument contains the entire agreement between the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect.

Amendments to this Agreement must be in writing, signed by all Parties to this Agreement and recorded in the Office of the DuPage County Recorder. No amendment may remove, revoke or modify any right or privilege of either Party hereto without the written consent of all the Parties hereto.

11. SEVERABILITY. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

12. CONSTRUCTIVE NOTICE AND ACCEPTANCE. Every person now or hereafter owning or acquiring any right, title or interest in or to any of the parcels of realty herein described or any portion thereof is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, by reference or otherwise, whether or not any reference to this Agreement is contained in the instrument by which such person acquired such right, title or interest.

13. LAW GOVERNING. 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 Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

14. NOTICE. Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, overnight courier or personal service, to the following addresses:

IF TO THE CITY:

IF TO THE DEVELOPER:

City Manager
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

IPT Naperville DC LLC
c/o Black Creek Group
518 17th Street, Suite 1700
Denver, Colorado 80202
Attn: General Counsel

Pursuant to the provisions of this paragraph, any Party may, at any time, change its address for the above purpose, by mailing at least ten days before the effective date thereof, a notice stating the change and setting forth the new address.

15. EXECUTION OF AGREEMENT. This Agreement shall be signed last by the City Manager and City Clerk of the CITY and the City Clerk shall affix the date on which they sign this Agreement and that date shall be the effective date of this Agreement.

16. AUTHORIZATIONS. Each Party represents and warrants to the other Party that (a) it has secured all necessary consents and approvals and provided all legally required notices for the execution and delivery of this Agreement; (b) no further action is required for full and timely performance of all obligations by each Party, as applicable, as and when required by this Agreement; and (c) the person(s) signing on behalf of such Party has been duly authorized to execute the Agreement on such Party's behalf.

17. CAPTIONS AND PARAGRAPH HEADINGS. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties set their hands and seals as of the date first written above.

FOR THE DEVELOPER

IPT Naperville DC LLC, a Delaware limited liability company

- By: BTC II Line Holdco LLC, a Delaware limited liability company, its sole member
- By: BTC II Holdco LLC, a Delaware limited liability company, its sole member
- By: Build-To-Core Industrial Partnership II LP, a Delaware limited partnership, its manager
- By: IPT BTC II GP LLC, a Delaware limited liability company, its general partner
- By: IPT Real Estate Holdco LLC, a Delaware limited liability company, its sole member
- By: Industrial Property Operating Partnership LP, a Delaware limited partnership, its sole member
- By: Industrial Property Trust Inc., a Maryland corporation, its general partner

By: _____

Name: _____

Title: _____

State of _____)

)

County of _____)

The foregoing instrument was acknowledged before me by _____, this ____ day of _____, 2018.

- seal -

Notary Public

FOR THE CITY OF NAPERVILLE

By: _____
Doug A. Krieger
City Manager

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

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager, and Pam Gallahue, City Clerk, this ____ day of _____, 2018.

Notary Public

-seal-

EXHIBIT A

LOT 1 IN NAPERVILLE IPT SUBDIVISION, THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DATED JUNE ____, 2018 AND RECORDED AS DOCUMENT NO. _____.

P.I.N. 07-17-204-008 (Partial)

Property Address: 540 Frontenac Court
Naperville, Illinois 60563

EXHIBIT B

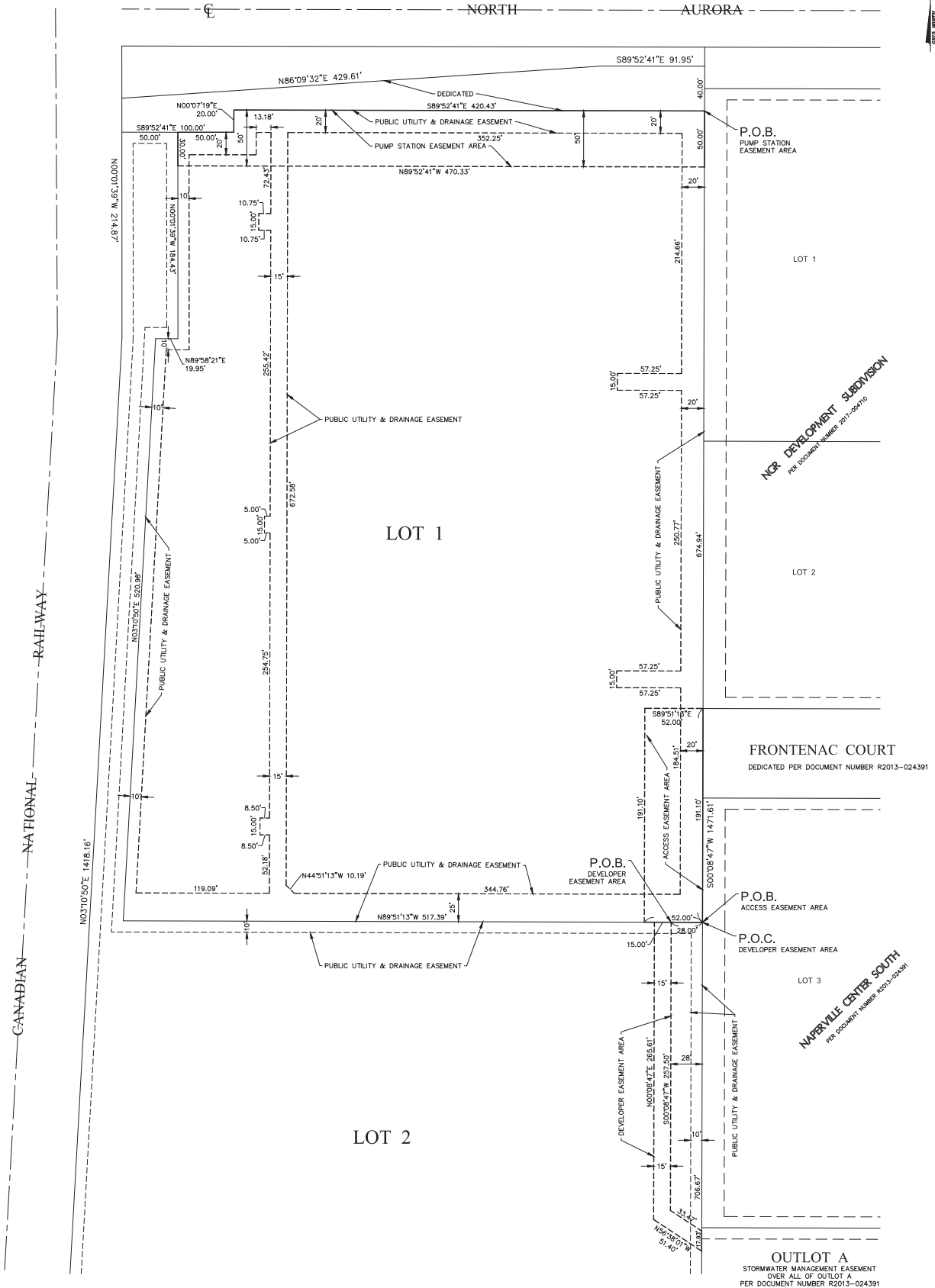
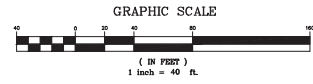
LOT 2 IN NAPERVILLE IPT SUBDIVISION, THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN IN DUPAGE COUNTY, ILLINOIS, DATED JUNE ____, 2018 AND RECORDED AS DOCUMENT NO. _____.

P.I.N. 07-17-204-008 (Partial)

Property Address: 535 Frontenac Court
Naperville, Illinois 60563

EXHIBIT C

DEPICTION OF PUMP STATION AND EASEMENT AREAS



J:\PDATA\2017 PROJECTS\17.0387\17.0387-03 EASEMENT EXHIBITS\17.0387-03 EXH.DWG

1 OF 1

COMPASS SURVEYING LTD.
 ALTA SURVEYS • TOPOGRAPHY • CONSTRUCTION STAKING
 2631 GINGER WOODS PARKWAY, STE. 100
 AURORA, IL 60502
 PHONE: (630) 828-9100 FAX: (630) 828-7010 EMAIL: ADMIN@COMPASSSURVEYING.COM

PROJECT: NAPERVILLE IPT SUBDIVISION
CLIENT: Kimley-Horn
 © 2017 KIMLEY-HORN AND ASSOCIATES, INC.
 1001 WARENVILLE ROAD, SUITE 350,
 Lisle, IL 60532
 PHONE: 630-487-5560
 WWW.KHAST-HORN.COM

NO.	REVISIONS	DATE	BY
1	REVISED PER CLIENT COMMENTS	5-21-18	MRA
2	REVISED PER CLIENT COMMENTS	5-22-18	TSJ

DATE	PC	DRAWN BY	CHECKED BY	SK	BOOK	PG
5-11-18		MRA				

EXHIBIT D-1

LEGAL DESCRIPTION OF DEVELOPER EASEMENT AREA

A 15.00 FOOT WIDE STRIP OVER THAT PART OF LOT 2 IN NAPERVILLE IPT SUBDIVISION, RECORDED _____ AS DOCUMENT NO. _____, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 51 MINUTES 13 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT, 28.00 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 08 MINUTES 47 SECONDS WEST, PARALLEL WITH THE EAST LINE OF SAID LOT, 257.50 FEET; THENCE SOUTH 56 DEGREES 38 MINUTES 01 SECONDS EAST 33.47 FEET TO SAID EAST LINE; THENCE SOUTH 0 DEGREES 08 MINUTES 47 SECONDS WEST ALONG SAID EAST LINE, 17.93 FEET; THENCE NORTH 56 DEGREES 38 MINUTES 01 SECONDS WEST 51.40 FEET; THENCE NORTH 0 DEGREES 08 MINUTES 47 SECONDS EAST, PARALLEL WITH THE EAST LINE OF SAID LOT, 265.61 FEET TO THE NORTH LINE OF SAID LOT; THENCE SOUTH 89 DEGREES 51 MINUTES 13 SECONDS EAST 15.00 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT D-2

LEGAL DESCRIPTION OF ACCESS EASEMENT AREA

THAT PART OF LOT 1 IN NAPERVILLE IPT SUBDIVISION, RECORDED _____ AS DOCUMENT NO. _____, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTH 89 DEGREES 51 MINUTES 13 SECONDS WEST ALONG THE SOUTH LINE OF SAID LOT, 52.00 FEET; THENCE NORTH 0 DEGREES 08 MINUTES 47 SECONDS EAST, PARALLEL WITH THE EAST LINE OF SAID LOT, 191.10 FEET; THENCE SOUTH 89 DEGREES 51 MINUTES 13 SECONDS EAST 52.00 FEET TO THE EAST LINE OF SAID LOT; THENCE SOUTH 0 DEGREES 08 MINUTES 47 SECONDS WEST ALONG SAID EAST LINE, 191.10 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

EXHIBIT D-3

LEGAL DESCRIPTION OF PUMP STATION EASEMENT AREA

THAT PART OF LOT 1 IN NAPERVILLE IPT SUBDIVISION, RECORDED _____ AS DOCUMENT NO. _____, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT; THENCE SOUTH 0 DEGREES 08 MINUTES 47 SECONDS WEST ALONG THE EAST LINE OF SAID LOT, 50.00 FEET; THENCE NORTH 89 DEGREES 52 MINUTES 41 SECONDS WEST, PARALLEL WITH THE NORTH LINE OF SAID LOT, 470.33 FEET TO THE WEST LINE OF SAID LOT; THENCE NORTH 0 DEGREES 01 MINUTE 39 SECONDS WEST, 30.00 FEET TO THE NORTHWEST CORNER OF SAID LOT; THENCE SOUTH 89 DEGREES 52 MINUTES 41 SECONDS EAST ALONG SAID NORTH LINE 50.00 FEET; THENCE NORTH 0 DEGREES 07 MINUTES 19 SECONDS EAST ALONG SAID NORTH LINE, 20.00 FEET; THENCE SOUTH 89 DEGREES 52 MINUTES 41 SECONDS EAST ALONG SAID NORTH LINE 420.43 FEET TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.