

**ENCROACHMENT LICENSE AGREEMENT**

**Address:**

22 E. Chicago Avenue  
Naperville, IL 60540

**PINs:**

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

**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 (“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, 12<sup>th</sup> Floor, New York, New York 10169 (herein “**Licensee**”) 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 “**Licensor**” or “**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**

1. **WHEREAS**, Licensee is the fee simple owner of certain real property and all improvements located thereon located at 22 E. Chicago Avenue, Naperville, IL, having parcel identification numbers 07-13-437-006 and 08-18-327-017 depicted on **Exhibit A** and legally described on **Exhibit B** (the “**Property**”).
2. **WHEREAS**, Licensor owns the Washington Street right-of-way adjacent to the Licensee’s Property (hereinafter “**Licensor’s Property**”).
3. **WHEREAS**, Licensor, in conjunction with the Illinois Department of Transportation 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 along the Washington Street frontage of the Licensee's Property in order to accommodate the Licensor's Improvements as depicted on the Site Plan attached as **Exhibit C**.
5. **WHEREAS**, an existing railing on the Licensee's property encroaches upon the Licensor's Property due to the right-of-way dedication as depicted and generally described on **Exhibit D** (hereinafter "**Licensee's Encroachment**").
6. **WHEREAS**, Licensor has determined that, subject to strict compliance with the terms and conditions set forth herein, Licensee's Encroachment will not adversely impact the areas of Licensor's Property where the Licensee's Encroachment occur (hereinafter "**Encroachment Areas**") or impair the public health, safety and welfare.
7. **WHEREAS**, Licensee and Licensor consent and agree to such 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 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 Licensee's Encroachment to encroach upon and to occupy Licensor's Property as set forth herein. Upon transfer of the License to Licensee's successor, Licensee shall provide Notice, as hereinafter defined, to Licensor of the name and contact information for such successor licensee, and no further notice to or consent by Licensor shall be required.
3. The License herein granted shall be limited to the use by Licensee, and its successors or assigns, of the Encroachment Areas for the purpose of maintaining, repairing and replacing thereon Licensee's Encroachment as provided herein.
4. Licensor shall comply with all easements and covenants of record and with the provisions of the Naperville Municipal Code, as amended from time to time, including but not limited to compliance with right-of-way requirements. 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 Areas except as regards to the interest of Licensor as provided herein. Subject to the terms and conditions of this Agreement, upon completion of Licensor's Improvements Licensor agrees that it will not seek to terminate Licensee's (or Licensee's successors') use of the Encroachment Premises based upon the Naperville Municipal Code or any applicable zoning ordinances that would prohibit maintaining Licensee's Encroachment.
5. Licensee accepts the Encroachment Areas AS-IS in their condition as of the Effective Date of this Agreement as Effective Date is defined in Paragraph 23 hereof.

6. Licensee 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 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 Encroachment, and the condition of Licensee's Encroachment 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 against Licensee, including but not limited to reasonable attorney's fees (whether in-house or outside counsel) and costs.
7. 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 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 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.
8. 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 this Agreement and the revocable License granted herein is terminated as provided herein.
9. Licensee shall maintain the Encroachment Areas 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 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 Licensee's 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 Licensee's Encroachment or the Encroachment Areas when, in the sole determination of the Licensor, such action is necessary to protect the public health, welfare or safety. Licensee 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 Licensee leases or rents all or any part of Licensee's Property to another entity or individual, Licensee agrees to include provisions in such lease or rental agreement that reflect the obligations set forth herein. Notwithstanding any such lease or rental agreement, Licensee shall at all times remain liable for Licensee's obligations set forth herein.

10. The License granted herein shall be perpetual **except that** this Agreement and said License may be terminated by either Party as follows:
  - a. If Licensor reasonably determines that any of Licensee's Encroachment is not properly maintained; or the existence of any of Licensee's Encroachment may present a danger to the public's health, safety or welfare; or if it is determined by the Licensor/City that any part of Licensee's Encroachment interfere with or will potentially interfere with Licensor's use or proposed use of Licensor's S; or if Licensee ceases using any of the Encroachment Areas for Licensee's Encroachment for a period of more than 90 days, and other than typical, seasonal use, Licensor may terminate this Agreement and the License granted herein as to all or a portion of Licensee's Encroachment upon not less than sixty (60) days written Notice. Notwithstanding the foregoing, if the basis of termination is that Licensee's Encroachment is not properly maintained, Licensor shall provide written Notice to Licensee of the unacceptable condition. If Licensee fails to cure such unacceptable condition within thirty (30) days of receipt of Licensor's notice, Licensor may terminate this Agreement and the License granted herein as to all or a portion of Licensee's Encroachment upon not less than sixty (60) days' written Notice. 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 Licensee's Encroachment.
  - b. 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.
11. If this Agreement is terminated as to any of Licensee's Encroachment, Licensee 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 Licensee 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 Licensee's Encroachment and restore the Encroachment Areas as provided above. All reasonable 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.
12. Upon not less than thirty (30) day notice from Licensor, Licensee shall temporarily move or relocate all or a portion of Licensee's Encroachment to permit work or other activity within the Encroachment Areas. Licensee assumes all risk in the location of

Licensee's Encroachment and shall be responsible for removal or relocation of Licensee's Encroachment in the event that Licensor requires access to perform work within the Encroachment Areas. Licensor shall make reasonable efforts to avoid disturbance of Licensee's Encroachment.

13. 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.
14. 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.
15. 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.
16. Notice: Any notice ("**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:  
CR River Square, LLC  
230 Park Avenue, 12<sup>th</sup> Floor  
New York, New York 10169

With a copy to:

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

17. 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.

18. 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.
19. The following provisions of this Agreement shall survive the expiration or termination of this Agreement: 5, 6, 11, 13, 14, 15, 17, 18, and 19.
20. The effective date (“**Effective Date**”) of this Agreement shall be the date on which it is fully executed by both parties.
21. Lender Ratification. Attached as **Exhibit E** is the consent of Owner’s mortgagee (“**Lender**”) to this Agreement.
22. 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/ 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

\_\_\_\_\_  
Print Name

Seal

My Commission Expires: \_\_\_\_\_

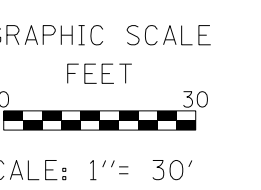
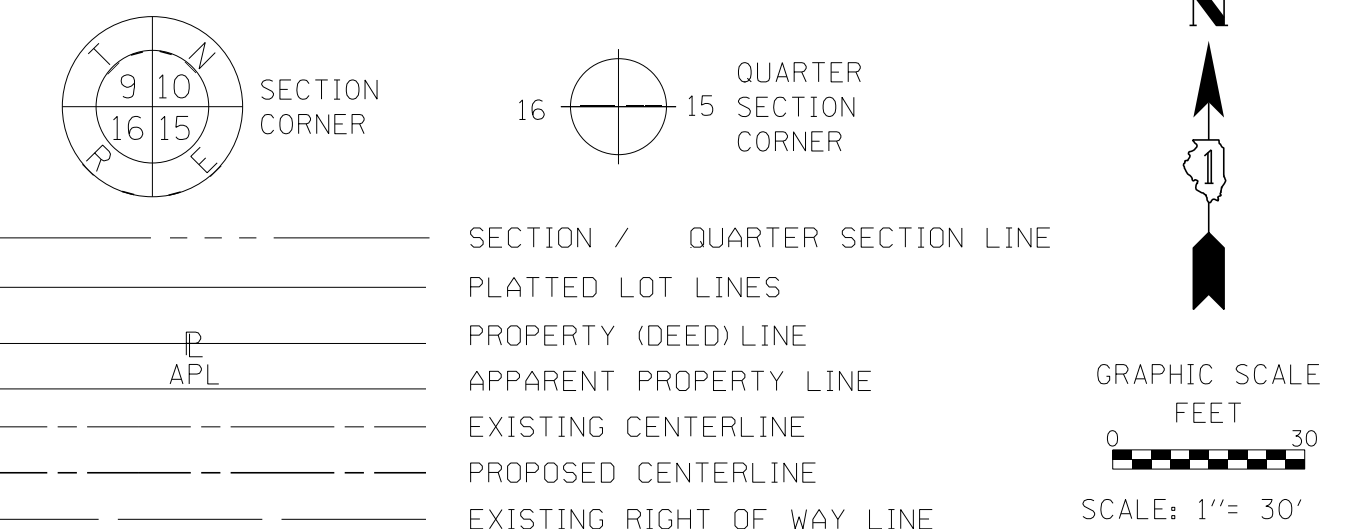
This Agreement was prepared by the Naperville Legal Department, 400 South Eagle Street,  
Naperville, IL 60540



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.

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		
0007 0007PE 0007TE	2.941	0.040	2.901	0.022	0.011		07-13-437-006 08-18-327-017	NARE RIVER SQUARE, LLC. AN ILLINOIS LIMITED LIABILITY COMPANY

LEGEND



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

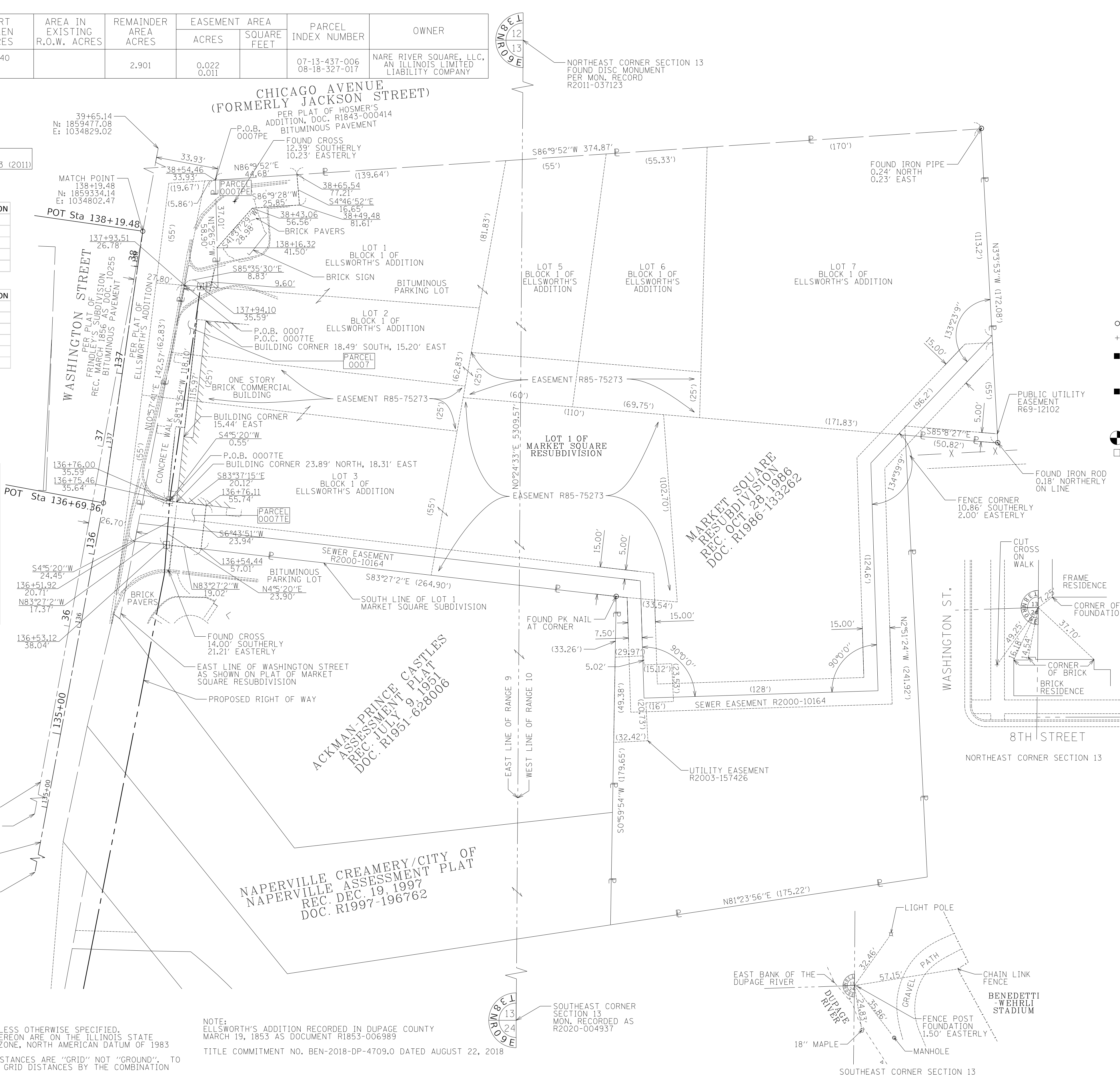
STATION	NORTHING	EASTING	DESCRIPTION
131+08.88	1858632.14	1034694.83	START
131+49.63	1858672.75	1034698.17	PC
132+70.20	1858792.92	1034708.04	PI
133+90.57	1858911.46	1034730.06	PT
136+69.36	1859185.57	1034780.97	POT
138+19.48	1859334.14	1034802.47	END

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



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. 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**

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



## **EXHIBIT D**

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

Railing: Part of the existing railing for the outdoor dining area will encroach into Licensor's Right-of-Way by less than 1'.