

**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

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Above space reserved for Recorder

**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

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

**This TEMPORARY CONSTRUCTION\_EASEMENT 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 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**”).
- 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, 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**”) which Property is part of the River District Shopping Center (the “**Center**”).

- C. **WHEREAS**, the City has determined that it is necessary and in the public interest to acquire a temporary construction easement (“**Temporary Easement**”) in 0.011 acres of the Property of the Property as depicted on **Exhibit A** and legally described on **Exhibit B** located on PIN 07-13-437-006 (hereinafter the “**Temporary Easement Premises**”) which will be used by the City for the Project as provided herein, and Grantor has agreed to grant the City said Temporary Easement on the Temporary Easement Premises for the purposes set forth herein.
- D. **WHEREAS**, Grantor represents that there are no lessee, rental, or tenant rights in the Temporary Easement Premises which would prohibit granting the City the rights described herein. As to any tenant/lessee which would, pursuant to their applicable lease, have rights in the Temporary Easement Premises and/or 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 with respect to the Temporary Easement granted herein prior to City payment of the consideration described herein.
- E. **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. Recitals. The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph in their entirety.

2. Title. Grantor represents and warrants that it has good title to the Temporary Easement Premises and that it has the sole authority to grant the Temporary Easement on the Temporary Easement Premises as described and referenced herein. As to any tenant/lessee which has an interest in the Temporary Easement Premise or which 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 Temporary Easement on the Temporary Easement Premises prior to City payment of the consideration described herein.

3. Grant of Temporary Easement and Consideration. For and in consideration of twenty-six thousand five hundred dollars (\$26,500) Grantor hereby grants a Temporary Easement to the City and any of City’s officers, agents, representatives, employees, contractors, licensees, successors, assigns and designees, including but not limited to the Illinois Department of Transportation, for necessary personnel, vehicles, and equipment to perform the following work

(“**Work**”) on, over, under, through, and across the Temporary Easement Premises: reconstruction of a portion of the driveway on Grantor’s property to match Washington Street as it is widened and regraded as part of the Project.

The Owner further grants to the City, and any of City’s officers, agents, representatives, employees, contractors, licensees, successors, or assigns the right, privilege and authority to enter upon the Temporary Easement Premises during the Term of this Agreement either by vehicle or on foot, together with the necessary workers and equipment to do any of the work described herein.

4. Term. The rights, easement and privileges granted herein shall commence upon the Effective Date of this Agreement and shall automatically terminate three (3) years from the Effective Date or upon completion of the Project as determined by the City Engineer, whichever is earlier.

5. Non-Exclusive Use. Grantor shall retain the right to use the Temporary Easement Premises provided, however, that Grantor’s use thereof may not interfere with Grantee’s use of the Temporary Easement Premises for the purposes herein described.

6. Acknowledgment. Grantor, without limiting the interest above granted, acknowledges that upon payment of the agreed consideration, all claims arising out of the Temporary Easement on the Temporary Easement Premises granted herein have been settled, including without limitation, any diminution in value of the Temporary Easement Premises and any remaining property of the Grantor caused or alleged to have been caused by the City’s use of the Temporary Easement Premises. This acknowledgment does not waive any claim for trespass or negligence against the Grantee or Grantee’s agents which may cause damage to the Grantor’s remaining property.

7. Conditions of Grant of Temporary Easement.

- (a) The City shall provide Grantor with actual notice of when the performance of the Project will commence and the anticipated date of completion not less than thirty (30) days prior to Grantee’s commencement of the performance of the Project;
- (b) At all times during the performance of the Work, the City’s access to, and use of, the Temporary Easement Premises shall be conducted in a manner to minimize any inconvenience to tenants and invitees of the Center, and parking for tenants and invitees of the Center;
- (c) In performing the Work, the City shall ensure that no equipment, debris, or work will extend outside the Temporary Easement Premises onto other common areas of the Center. The City will perform the Work in such a manner so as to minimize any inconvenience to tenants and invitees of the Center. Grantee will not interfere with any utility lines, facilities, or easements within the Temporary Easement Premises or elsewhere on the property of the Center. Grantee will separate the Premises by cones, fencing, or by other appropriate construction safety barriers while Grantee performs the Work where necessary to allow safe ingress/egress to adjacent areas of the Center.

8. Restoration. The City shall ensure that upon completion of the Work authorized by this temporary construction easement grant, all equipment shall be removed and the surface of the Temporary Easement Premises shall be restored to the same or better condition than that which existed prior to the beginning of the Work, subject to regrading which is the purpose of the Work. The City shall cause any and all damages to the Temporary Easement Premises to be repaired to the extent caused by the performance of the Project.

9. Defense, Indemnification, and Hold Harmless.

9.1 Grantor/Owner. Grantor shall defend, indemnify and hold the City of Naperville and its officers, agents, and employees harmless from and against any claim arising out of the grant of the Temporary Easement pursuant to the terms herein, including but not limited to any claim raised by tenants, lessees, or any other individual or entity claiming a right in the Temporary Easement Premises.

9.2 Grantee/City. Except for the negligent and willful misconduct of the Grantor and its officers, employees, agents, affiliates, parent companies, subsidiaries, 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 use of the Temporary Easement Premises, including but not limited to any lien or claim of lien pertaining to said Work and any claims or causes of action arising out of any injury or damage caused to any persons or property provided that in the event that any such claims or causes of actions are asserted against Grantor, Grantor shall promptly furnish the City with written notification thereof.

10. Insurance. 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 Grantor. Before commencing the Work hereunder, the City shall furnish to Grantor 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:

(i) Name the following as additional insureds in connection with this Agreement ("**Additional Insureds**"): Grantor, Grantor's lender, Voya Retirement Insurance & Annuity Company, and Mid-America Asset Management, Inc. (excluding Workmen's Compensation);

(ii) Grantee shall give Grantor notice within three (3) business days of receipt of notice of any change in the limits of liability, decrease in coverage or other material change in coverage, or cancellation of insurance in its entirety; and

(iii) Waiver of any right of subrogation of the insurers against the Additional Insureds.

## 11. General Provisions.

11.1 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.

11.2 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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, 12<sup>th</sup> Floor  
New York, New York 10169

c/o Mid-America Asset Management, Inc.  
Attn: Dan Hanson  
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

11.7 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.

11.8 Severability. If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause or provision shall be deemed severed from this Agreement but will not affect any other provisions of this Agreement, which shall otherwise remain in full force and effect.

11.9 Exhibits Incorporated. All exhibits referenced herein are incorporated herein and made part hereof.

11.10 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.

11.11 Survival. The following provisions of this Agreement shall survive the expiration or termination of this Agreement: Sections 2, 6, 8 and 9 (and all subparts of each) and Subsections 11.1, 11.2, 11.3, 11.4, 11.5, 11.7, 11.8 through 11.11.

11.12 Recordation. This Agreement shall be recorded by the City with the DuPage County Recorder.

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

11.14 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

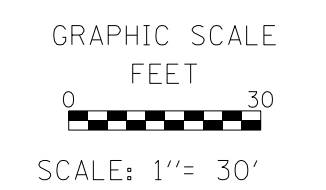
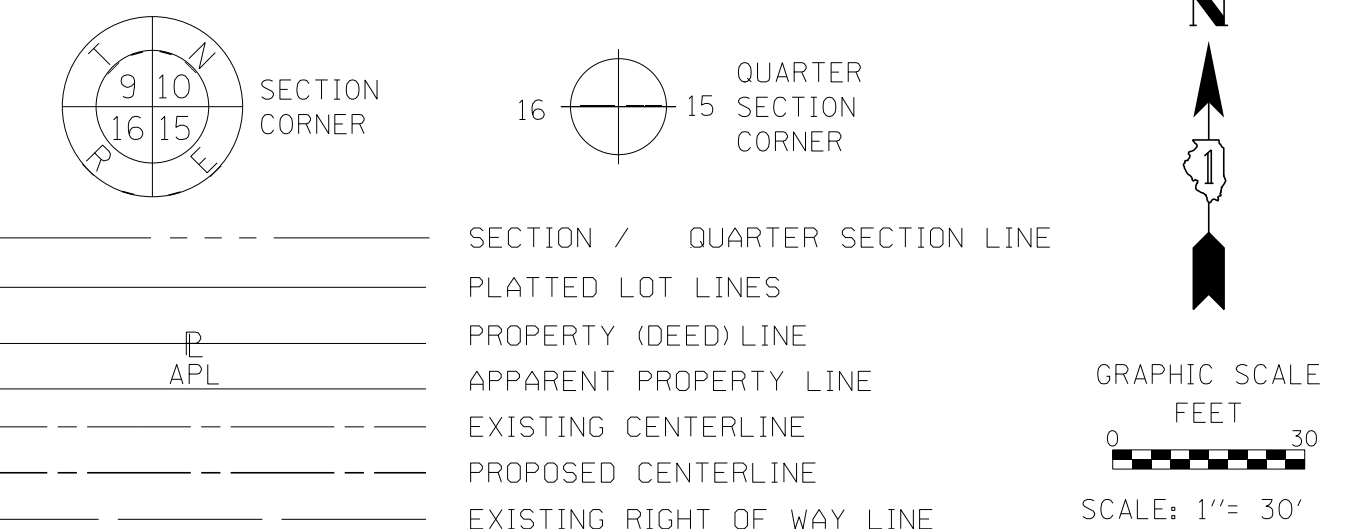
My Commission Expires: \_\_\_\_\_

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



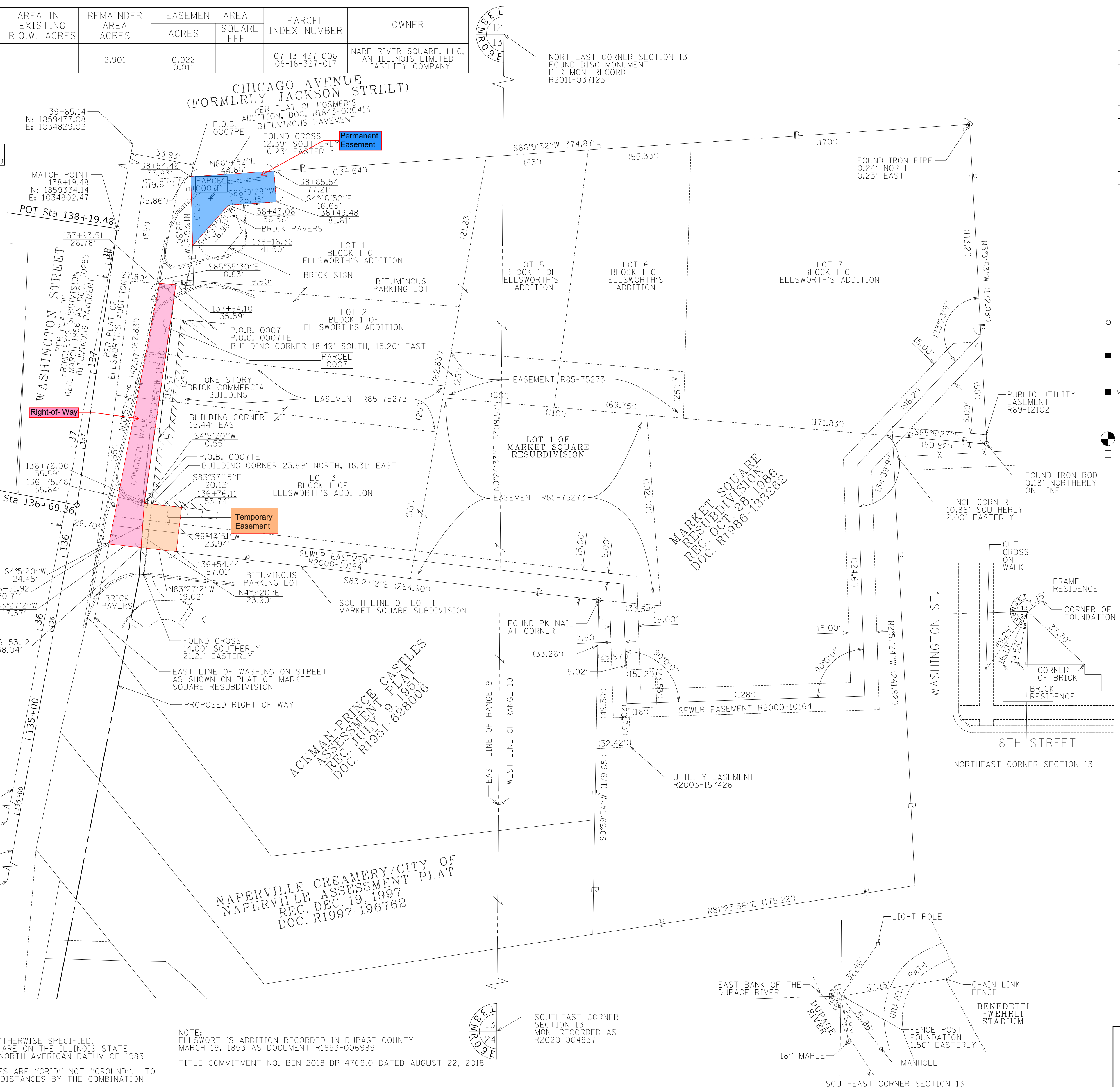
PROJECT COORDINATES ILLINOIS STATE PLANE, EAST ZONE, NAD83 (2011)

EXISTING WASHINGTON STREET STATION NORTHING EASTING DESCRIPTION table

PROPOSED WASHINGTON STREET STATION NORTHING EASTING DESCRIPTION table

SECTION CORNERS CORNER NORTHING EASTING table

PARCEL COORDINATES STATION OFFSET NORTHING EASTING table



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, etc.

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

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: STA. 136+51.92 TO STA. 38+65.54 JOB NO.: 10557 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

## **LEGAL DESCRIPTION OF TEMPORARY 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 ACCURATELY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE EAST LINE OF WASHINGTON STREET AS SHOWN ON THE PLAT OF SAID MARKET SQUARE RESUBDIVISION WITH THE SOUTH LINE OF LOT 1 OF BLOCK 1 OF ELLSWORTH'S ADDITION, A SUBDIVISION RECORDED MARCH 19, 1853 IN DUPAGE COUNTY AS DOCUMENT NUMBER R1853-006989; THENCE SOUTH 85 DEGREES 35 MINUTES 30 SECONDS EAST, 8.83 ALONG SAID SOUTH LINE OF LOT 1; THENCE SOUTH 8 DEGREES 13 MINUTES 54 SECONDS WEST, 115.97 FEET; THENCE SOUTH 4 DEGREES 5 MINUTES 20 SECONDS WEST, 0.55 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 83 DEGREES 37 MINUTES 15 SECONDS EAST, 20.12 FEET; THENCE SOUTH 6 DEGREES 43 MINUTES 51 SECONDS WEST, 23.94 TO THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 83 DEGREES 27 MINUTES 2 SECONDS WEST, 19.02 FEET ALONG SAID SOUTH LINE; THENCE NORTH 4 DEGREES 5 MINUTES 20 SECONDS EAST, 23.90 FEET TO THE POINT OF BEGINNING, ALL LYING WITHIN DUPAGE COUNTY, ILLINOIS.

SAID PART CONTAINS 0.011 ACRES, MORE OR LESS.

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

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