

PURCHASE AND SALE AGREEMENT
[Part of 2404 North Aurora Road]

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into as of this _____ day of _____ 2020 (the “**Effective Date**”) by and between the Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121 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. Hanson Exchange LLC and the City of Naperville shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

RECITALS

- A. WHEREAS, the Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121 (“**Owner**”) is the owner in fee simple of certain real property and all improvements located thereon located at 2404 North Aurora Road, Naperville 60563, legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof (“**Property**”); and
- B. WHEREAS, the City of Naperville (“**City**”) desires to purchase, and the Owner desires to sell approximately 0.335 acres of said Property comprised of a twenty foot (20’) wide strip of land along the entire frontage of the Property which will be used by the City to undertake roadway improvements on North Aurora Road between Weston Ridge Drive and Frontenac Road in conjunction with the Naperville Township Road District (“**Project**”); and
- C. WHEREAS, the portion of the Property sought to be acquired by the City for the Project is depicted and legally described on **Exhibit C** (“**City Parcel**”); and
- D. WHEREAS, the Owner has also agreed, by separate agreement, to grant a temporary construction easement on approximately 0.012 acres of the Property comprised of an approximately five foot (5’) wide by one hundred and five foot (105’) long strip of the Property located to the south of the City Parcel as depicted and legally described on **Exhibit C** (“**TCE**” or “**TCE Parcel**”); and
- 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, for consideration of the foregoing Recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

- 1. **INCORPORATION OF RECITALS.** The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph in their entirety.
- 2. **CONSIDERATION/RESTORATION.**

- 2.1 Consideration. Subject to the terms and conditions set forth herein, the consideration to be provided to the Owner by the City for the TCE and for acquisition of the City Parcel, and to compensate Owner for any and all impact to the Property as a result thereof, is one hundred and fourteen thousand, one hundred dollars (\$114,100) to be paid in cash at the Closing, as Closing is defined herein. As additional consideration to be provided to the Owner by the City for the TCE and for acquisition of the City Parcel, the City has agreed to undertake the following with respect to the Property: (i) install a street light illuminating the driveway at a mutually agreeable location; (ii) install a gate south of the right of way securing the driveway; (iii) construct a 36-foot wide entrance, as measured at the right of way line; (iv) grade the berm at the entrance to Property to the reasonable satisfaction of the Owner; (v) install trees as generally indicated on **Exhibit D** attached hereto and made part hereof during the City's fall tree planting program after completion of the Project; and (vi) the City will construct the multi-use trail to be constructed as part of the Project with concrete where it cuts through the Owner's asphalt driveway for the Property.
- 2.2 Restoration. The City, at its sole cost, will restore the Property disturbed by the construction of the Project to a condition equal to or better than its condition prior to construction.

3. DEED AND TITLE.

3.1 At Closing Owner shall convey or cause to be conveyed to the City good title to the City Parcel by a recordable Special Warranty Deed in a form approved by the City Attorney and free and clear of all liens, encumbrances, easements, restrictions, or other matters affecting title to said property subject to the following permitted exceptions (hereinafter "**Permitted Exceptions**") if any:

- 3.1.a. General real estate taxes not due and payable at time of Closing as further provided in Subsection 6.1 hereof.
- 3.1.b. Zoning laws and ordinances;
- 3.1.c. Easements for public utilities;
- 3.1.d. Public roads and highways and easements pertaining thereto;
- 3.1.e. Rights of way for drainage tiles, ditches, feeders, laterals and underground pipes, if any;
- 3.1.f. Rights of adjoining and contiguous land owners to have the uninterrupted flow of waters of any stream which may flow on or through the Property maintained.
- 3.1.g. Additional exceptions approved in writing by the City Attorney. If the Owner is unable to cure any exception objected to by the City Attorney, in such instance this Agreement shall become null and

void and the Parties shall have no liability to each other and no obligation to consummate the transaction anticipated herein.

3.2 The City acknowledges that it is accepting the City Parcel on an “AS-IS” basis, without any implied warranties, and that the City is completely at risk with respect to all attributes and conditions, latent or otherwise, of the City Parcel.

4. OWNER’S REPRESENTATIONS AND COVENANTS.

4.1 The Owner represents and warrants that:

4.1.1 It has good title to the TCE Parcel, and to City Parcel subject to the Permitted Exceptions described in Section 3 above; and

4.1.2 It has the sole authority to convey fee simple title to the City Parcel to the City subject to the Permitted Exceptions described in Section 3 above.

4.1.3 It has the sole authority to grant the City a temporary construction easement on the TCE Parcel to be used in furtherance of the Project.

4.1.4 Owner acknowledges and represents that neither the Property nor the TCE Parcel are the subject of any pending real estate tax special assessment. Owner further acknowledges and represents, with no duty to investigate, that to the best of its knowledge neither the Property nor the TCE Parcel are the subject of any environmental action, inquiry, or investigation.

4.1.5 The Owner shall not encumber the City Parcel or TCE Parcel, or any part of either, with any mortgage, lien, or any obligation of any kind which mortgage, lien, or obligation would affect said City Parcel or the TCE Parcel after Closing. If any such encumbrance is filed on the City Parcel or the TCE Parcel after the Closing relating to obligations or circumstances occurring prior to Closing, the Owner agrees that the Owner shall immediately remove such encumbrances; and

4.1.6 The Owner represents that as of the Closing there will be no management, maintenance, or service agreements in effect which apply to or affect any portion of the City Parcel or the TCE Parcel, and that there will be no outstanding obligations or commitments of any kind relative to any management, maintenance or service agreement(s) affecting the City Parcel or the TCE Parcel as of the Closing; and

4.1.7 Except as to the provisions contained in Section 4.1.4 above, the Owner agrees to defend, indemnify, and hold the City harmless against any claim,

demand, cost, and liability arising out of any breach of the Owner representations and covenants set forth in this Section 4. The Owner further agrees to defend, indemnify, and hold the City harmless against any claims, demands, or actions of any kind brought by any tenant or lessee of the Property resulting from Owner's conveyance of the City Parcel or granting of a TCE to the City.

5. TITLE AND CLOSING.

5.1 When used herein, the term “**Closing**” or “**Close**” shall mean the conveyance of the City Parcel to the City in accord with the terms of this Agreement at Wheatland Title Guaranty Company (“**Title Company**”). Such Closing may be conducted by mail by agreement of counsel for the Parties. The Parties shall Close on a date that is mutually agreed upon by the Parties.

5.2 The City agrees to pay all closing costs, escrow costs, and title costs (“**Closing Costs**”) related to Closing on the Property except that Owner shall be responsible for its attorneys' fees for all matters associated with the conveyance of the Property to the City, including but not limited to the Closing. The Owner shall be responsible for its own costs for all matters associated with the conveyance of the Property other than Closing Costs.

5.3 The City, at its sole cost, has obtained a title commitment (“**Title Commitment**”) for the City Parcel from the Title Company on the current form of the American and Title Association Owner's Policy (or equivalent policy) in the amount of seventy-six thousand dollars (\$76,000) through the date thereof.

5.4 At the Closing, the City shall cause the Title Company to provide the City with a marked-up Title Commitment in the amount of seventy-six thousand dollars (\$76,000) showing the City of Naperville in title to the City Parcel subject only to the Permitted Exceptions set forth in Subsection 3.1 above.

5.5 The Owner shall furnish the City, at Closing, an Affidavit of Title for the City Parcel covering the date of Closing subject only to the Permitted Exceptions or as to those exceptions, if any, as to which the title insurer commits to extend insurance.

5.6 The Parties shall execute a completed Real Estate Transfer Declaration signed by authorized agents in the form required by the Illinois Real Estate Transfer Act. This transaction is exempt from any city, county or State transfer stamps. The City shall be responsible for obtaining an exempt stamp for the City of Naperville Transfer Tax.

5.7 Possession of the City Parcel shall be granted to the City at the time of Closing.

5.8 The City of Naperville acknowledges that the parking lot on the Property, which is located within a required 100' front yard setback, constitutes and will continue to constitute a legal non-conforming structure on the Property. As such, said parking lot, including construction equipment and material storage thereon, shall be permitted to remain on the Property subject to compliance with the provisions Section 6-2-19 of the Naperville Municipal Code (EXISTING BUILDINGS AND STRUCTURES). To evidence this, the Naperville City Council has adopted

the Resolution attached hereto and made part hereof as **Exhibit E**. Further, said Resolution confirms that North Aurora Road is not Illinois Department of Transportation (“IDOT”) roadway; therefore, the existing 8-10’ high berm on the Property, located immediately to the South of the City Parcel is not subject to IDOT setback provisions, and furthermore is compliant with City of Naperville municipal code requirements.

6. REAL PROPERTY TAXES.

6.1 The Owner shall be solely obligated to pay all real estate taxes which are due on the Property prior to Closing or which accrue on the Property up to the date the City Parcel is conveyed to the City. If the City receives a real estate tax bill for the City Parcel for taxes that were due prior to the conveyance of the City Parcel to the City, or which accrued prior to the conveyance of the City Parcel to the City, the Owner shall be obligated to pay said bill within fifteen (15) calendar days of receipt thereof from the City.

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 all Parties.

7.2 Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Original signatures transmitted by facsimile or email will be effective to create such counterparts and will have the same effect as if signed in person.

7.3 Binding Nature. This Agreement is binding on the Parties and their successors and assigns.

7.4 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.

7.5 Non-Assignment. The Parties hereby warrant and represent that they have not assigned nor in any way transferred or conveyed, all or any portion of the claims covered by this Agreement. The Parties acknowledge and agree that this warranty and representation is an essential and material term of this Agreement, without which they would not have entered into this Agreement.

7.6 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 a dispute between the Parties arising out of the terms and conditions of this Agreement, the prevailing party in such dispute shall be entitled to recover reasonable attorneys’ fees and court costs from the non-prevailing party.

7.7 Legal Counsel. The Parties acknowledge that they have consulted with legal counsel of their choosing, or were given the opportunity to consult with legal counsel, before entering into this Agreement, that they have read this Agreement, that they know and understand

its contents, and that they execute this Agreement freely and voluntarily. In executing and giving this Agreement, each Party acknowledges that it has not relied on or made to the other Party or anyone purporting to act on its behalf any promise or representation that is not in this Agreement.

7.8 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.

7.9 Notices. All notices required under this Agreement shall be served on 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 OWNER

Robert G. Krug
President, K-Five Construction Corporation
999 Oakmont Plaza Drive, Suite 200 | Westmont, IL
60559

With a copy to:

Vince Rosanova
Rosanova & Whitaker LTD
127 Aurora Avenue
Naperville, Illinois 60540
630-880-8820 (C)
630-355-4600 (O)
630-352-3610 (F)

7.10 Choice of Law. This Agreement shall be governed, in all respects, by the laws of the State of Illinois, irrespective of its choice of law rules. All disputes shall be resolved in the Circuit Court where the Property is located as the sole and exclusive jurisdiction and venue.

7.11 Cooperation. The Parties agree to cooperate in good faith and execute any documents necessary to effectuate and/or consummate the terms of this Agreement.

7.12 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. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous and unduly restrictive by a court of competent jurisdiction, it shall not be stricken, in its entirety and held totally void and unenforceable, but shall be deemed rewritten and shall remain effective to the maximum extent permissible under applicable law within reasonable bounds.

7.13 Further Assurance. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, agreed Orders and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement, which said purpose is acknowledged to be a full and complete resolution of the eminent domain dispute with a comprehensive release of liability.

7.14 No Broker. Each Party warrants and represents to the other that it has not retained a broker in connection with the purchase and sale of the City Parcel. Each Party agrees to defend, indemnify, and hold harmless the other against any claim for brokers' fees and/or similar commissions claimed by any party claiming through them.

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

7.16 Ambiguities. 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.

7.17 Authorizations. Each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and by such signature to bind that Party to this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, we have executed this Agreement effective as of the date above written.

Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121

By: _____

Printed Name: _____

Its: _____

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered said instrument as his/her free and voluntary act for the uses and purposes herein set forth.

Given under my hand and official seal this ____ day of _____, 2020.

Notary Public
My Commission Expires: _____

Seal

Print Name

City of Naperville

By: _____

Name: Douglas A. Krieger

Its: City Manager

ATTEST

By: _____

Name: Pam Gallahue, Ph.D.

Its: City Clerk

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

OF THE PART OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE NORTH LINE OF LANDS OWNED BY THE BURLINGTON NORTHERN RAILROAD COMPANY (FORMERLY THE CHICAGO, BURLINGTON AND QUINCY RAILROAD) AND LYING SOUTH OF THE CENTER LINE OF NORTH AURORA ROAD AND LYING WEST OF THE WEST LINE OF WESTON RIDGE INDUSTRIAL PARK, UNIT NO. 1 ASSESSMENT PLAT (ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1969 AS DOCUMENT R69-42494) (EXCEPT THEREFROM THE WEST 862.12 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE WEST LINE THEREOF, AND EXCEPT THEREFROM THE EAST 684.41 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE EAST LINE THEREOF), ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-16-101-029, 07-16-101-030, and 07-16-101-031

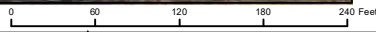
ADDRESS: 2404 NORTH AURORA ROAD, NAPERVILLE, IL 60563



NORTH AURORA RD

2404 NORTH AURORA RD

Property



Transportation, Engineering and Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 8/27/2020

Exhibit B
DEPICTION OF PROPERTY
2404 N. Aurora Rd (K-Five Construction)

This map should be used for reference only. The data is subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.



LEGAL DESCRIPTION OF CITY PARCEL:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860 and the point of beginning; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet; thence North 89 degrees 54 minutes 05 seconds West, a distance of 375.74 feet; thence North 89 degrees 52 minutes 02 seconds West, a distance of 344.90 feet to the west line of the grantor, according to said trustee's deed; thence North 0 degrees 08 minutes 00 seconds East along the west line of the grantor, according to said trustee's deed, a distance of 20.19 feet to the point of beginning.

Said parcel containing 0.335 acre, more or less.

Index No. 07-16-101-029 [part of]

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION EASEMENT:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

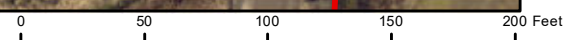
Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet to the point of beginning; thence North 89 degrees 54 minutes 05 seconds West, a distance of 104.21 feet; thence South 0 degrees 05 minutes 55 seconds West, a distance of 5.00 feet; thence South 89 degrees 54 minutes 05 seconds East, a distance of 103.98 feet to the east line of the grantor, according to said trustee's deed; thence North 2 degrees 42 minutes 47 seconds East along the east line of the grantor, according to said trustee's deed, a distance of 5.01 feet to the point of beginning.

Said temporary easement containing 0.012 acre, more or less.

Said temporary easement to be used for construction purposes.

Index No. 07-16-101-029

COUNTRY GLENDRI



Transportation, Engineering and Development Business Group
 Questions Contact (630) 420-6100
 www.naperville.il.us
 Date: 9/23/2020

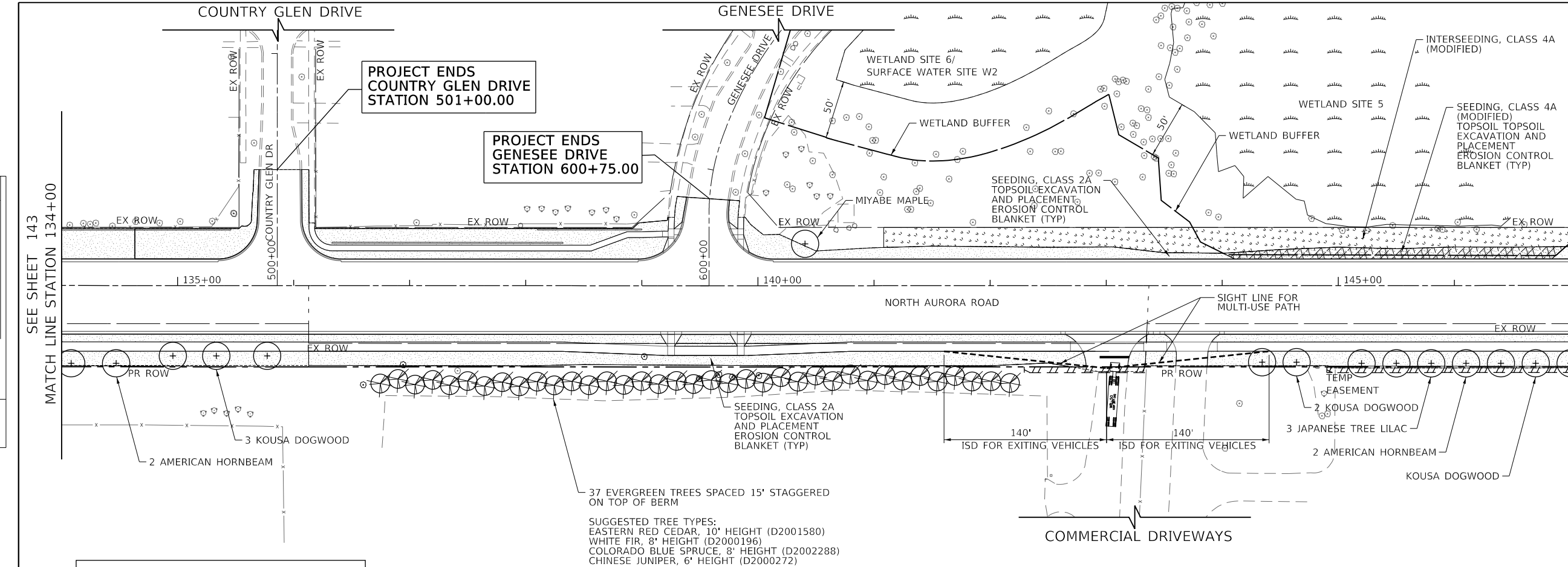
Exhibit C
LEGAL DESCRIPTION AND DEPICTION OF CITY PARCEL & TEMPORARY EASEMENT
 2404 N. Aurora Rd (K-Five Construction)

This map should be used for reference only. The data is subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.



PLAN	SURVEYED	DATE
	PLOTTED	
	CHECKED	
	BY	
	NO.	

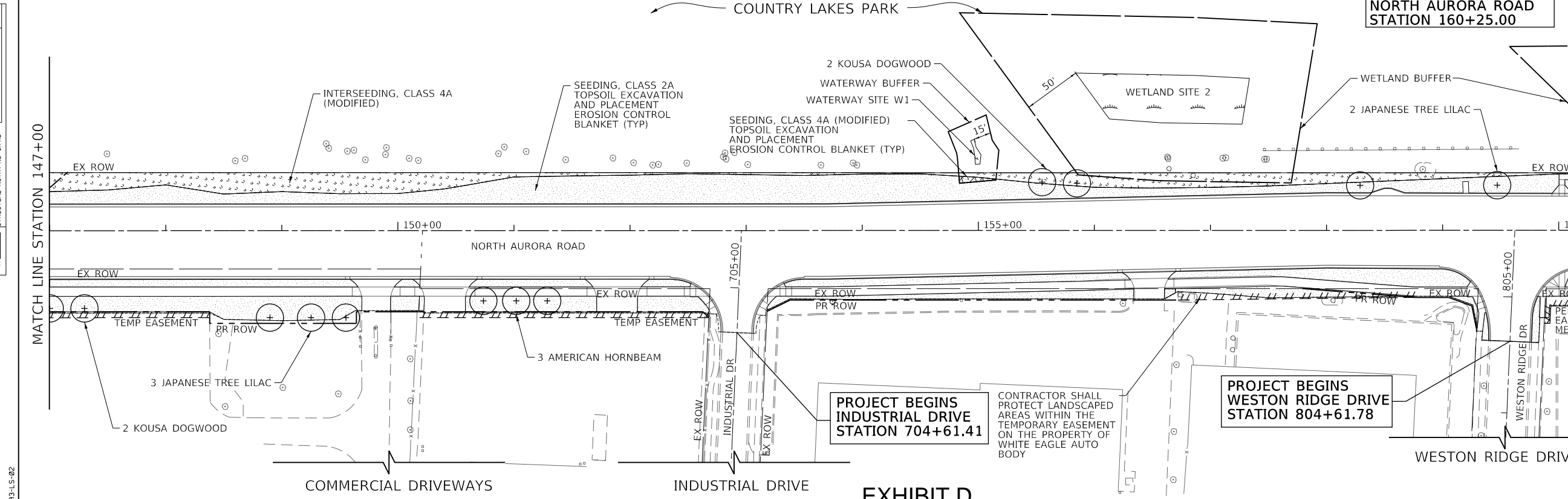
PROFILE	SURVEYED	DATE
	GRADES CHECKED	
	STRUCTURE NOTATIONS CHECKED	
	NO.	



DRAFT

- LEGEND**
- SEEDING, CLASS 2A
TOPSOIL EXCAVATION AND PLACEMENT
EROSION CONTROL BLANKET
HEAVY DUTY EROSION CONTROL
BLANKET ON SLOPES STEEPER THAN 3:1
 - SEEDING, CLASS 4A (MODIFIED)
TOPSOIL EXCAVATION AND PLACEMENT
EROSION CONTROL BLANKET
HEAVY DUTY EROSION CONTROL
BLANKET ON SLOPES STEEPER THAN 3:1
 - SODDING, SALT TOLERANT
TOPSOIL EXCAVATION AND PLACEMENT
 - INTERSEEDING, CLASS 4A (MODIFIED)
 - PROPOSED SHADE TREE
 - PROPOSED EVERGREEN TREE

NOTE:
THE CONTRACTOR SHALL PROVIDE A MINIMUM 5 FOOT DIAMETER MULCH BED FOR ANY EXISTING TREES TO REMAIN AND ANY NEW TREES.



SEE SHEET 145

FILE NAME = 090193-LS-02



USER NAME = brvanderwal	DESIGNED - AMK	REVISED -
	DRAWN - BMS	REVISED -
PLOT SCALE = 50 SCALE	CHECKED - BVW	REVISED -
PLOT DATE = 2/27/2020	DATE - 2/27/2020	REVISED -

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

**NORTH AURORA ROAD
FRONTENAC ROAD TO FAIRWAY DRIVE
LANDSCAPING**

SCALE: 1"=50' SHEET 2 OF 4 SHEETS STA. 134+00.00 TO STA. 160+25.00

F.A.U. R.T.E.	SECTION	COUNTY	TOTAL SHEETS	SHEET NO.
1509	08-00140-00-PV	DuPAGE	331	144
CONTRACT NO. 61G19			ILLINOIS FED. AID PROJECT	

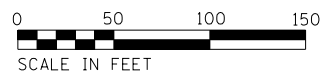


EXHIBIT D

RESOLUTION NO. 20 - ____

A RESOLUTION AFFIRMING THE APPLICABILITY OF SECTION 6-2-19 (EXISTING BUILDINGS AND STRUCTURES) TO THE PROPERTY LOCATED AT 2404 NORTH AURORA ROAD FOLLOWING ACQUISITION OF ADDITIONAL RIGHT-OF-WAY FOR NORTH AURORA ROAD

RECITALS

1. **WHEREAS**, the property located at 2404 North Aurora Road in the City of Naperville, legally described on **Exhibit A** and depicted on **Exhibit B** (hereinafter “Subject Property”), is owned by Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121, 999 Oakmont Plaza Drive, Westmont, IL 60559 (hereinafter “Property Owner”); and
2. **WHEREAS**, the Subject Property was annexed to the City in 1980 and is zoned I (Industrial), and at all times has been utilized for several industrial uses including as a construction equipment and material storage yard which uses the city acknowledges are all in conformance with the City’s zoning code; and
3. **WHEREAS**, the Subject Property abuts North Aurora Road along its northern property line; and
4. **WHEREAS**, North Aurora Road is a minor arterial roadway and designated truck route with an average daily trip of 21,000 vehicles per day, serving both residents of Naperville and Aurora, as well as providing access to the Route 59 Metra Station; and
5. **WHEREAS**, in 2021, the City of Naperville, in conjunction with the Naperville Township Road District, will undertake CIP# SC033 to improve North Aurora Road between Weston Ridge Drive and Frontenac Road (hereinafter “CIP# SC033”); and

EXHIBIT E

6. **WHEREAS**, the city represents to the Property Owner that CIP# SC033 will increase roadway capacity by adding one through lane in each direction, thereby reducing congestion; improve safety through the addition of roadway lighting and left turn channelization; add new pedestrian and bicycle facilities to provide access to the Route 59 Metra Station; and improve corridor drainage; and
7. **WHEREAS**, CIP# SC033 necessitates the acquisition of an additional twenty feet (20') of North Aurora Road right-of-way along the frontage of the Subject Property (hereinafter "Acquisition") as depicted in Exhibit C as well as temporary access easements; and
8. **WHEREAS**, per Section 6-8C-7 (Industrial District: Yard Requirements) of the current Naperville Municipal Code (hereinafter "Code"), there shall be a required yard adjacent to each existing or proposed roadway which bounds an individual tract. Such yard shall not be less than twenty feet (20') in depth; provided, however, that such yard located across a street from a residence district shall in no event be less than one hundred feet (100') in depth; and
9. **WHEREAS**, per Section 6-8C-7, the city has reviewed the Subject Property and confirms it has a required yard of 100' adjacent to North Aurora Road; and
10. **WHEREAS**, Section 6-9-2:4.3 of the Code (Off-Street Parking Facilities: Industrial), requires that parking facilities, including construction equipment and material storage yards, may not be located in the required front yard; and
11. **WHEREAS**, a portion of the existing parking lot on the Subject Property, including construction equipment and material storage, is located within the required 100' front yard and has been deemed by the City to be an existing legal non-conforming improvement; and

12. **WHEREAS**, following Acquisition, the construction equipment and material storage yard located on the Subject Property (hereinafter “Storage Yard”) will be located within the required 100’ yard, in conflict with the Code; and
13. **WHEREAS**, the City also affirms that the parking lot, including construction equipment and material storage, will continue to be a legal non-conforming improvement following Acquisition; and
14. **WHEREAS**, the Subject Property is also improved with a berm which is approximately 8-10’ in height and located along North Aurora Road, immediately south of the Acquisition area (hereinafter “Berm”); and
15. **WHEREAS**, the Illinois Department of Transportation (hereinafter “IDOT”) requires a certain setback between an improvement, such as a berm, and an IDOT roadway (hereinafter “IDOT Setback”); and
16. **WHEREAS**, the City represents to Property Owner that North Aurora Road is not an IDOT roadway; therefore the IDOT Setback is not applicable to the Berm and in no event shall any IDOT requirement or requirement of any other governmental body be applicable or require the berm to be located or modified in any way including should the Property Owner redevelop the Subject Property in the future; and
17. **WHEREAS**, the City hereby confirms to Property Owner that the location of the Berm now and after the taking complies with all Code requirements; and
18. **WHEREAS**, Section 6-2-19 (Existing Buildings and Structures) of the Code provides regulations pertaining to the continuance, repair and alteration, restoration, and relocation of existing buildings and structures which do not comply with Code requirements; and

19. WHEREAS, the City Council, through this Resolution, hereby affirms that that regulations provided in Section 6-2-19 of the Code shall be applicable to the Subject Property following Acquisition, as further described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Following Acquisition, the Storage Yard located on the Subject Property will not comply with the 100' front yard setback required along North Aurora Road. The City Council affirms that Section 6-2-19 (Existing Buildings and Structures) of the Code shall be applicable to the Subject Property following Acquisition, including:

- A. Any building or structure which existed at the time of the adoption of this Title, or any amendment hereto, and which does not comply with yard requirements of the zoning district in which said building or structure is located upon the adoption of this Title, or any amendments hereto, may be continued during the remainder of the normal life of the building or structure or until the building or structure has deteriorated to the extent that it is no longer safe. The continuance of such building or structure shall be subject to the regulations herein set forth.
- B. Repairs and alterations which increase the bulk of the building or structure and which increase the lot coverage may be made to a building or structure which does not comply with the yard requirements of the zoning district in which said building or structure is located, provided said repairs or alterations comply with the conditions, yard requirements, height limitations, and bulk regulations of the zoning district in which said building or structure is located.
- C. Nothing in this Title shall prevent the reconstruction, repairing or rebuilding of a building, structure or part thereof which does not comply with yard requirements of the zoning district in which said building or structure is

located and which exists at the effective date hereof, rendered necessary by wear and tear, or deterioration of which is required by the provisions of the building regulations of the City relative to the maintenance of said buildings or structures, provided the cost of such work, within a two-year time period, shall not exceed fifty percent (50%) of the replacement cost of such building or structure at the time such work is done.

- D. If a building or structure which does not comply with yard requirements of the zoning district in which said building or structure is located is damaged by fire, collapse, explosion, or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed fifty percent (50%) of the replacement cost of the building or structure at the time of destruction or damage, then any new construction or reconstruction must comply with all regulations of the zoning district in which the building or structure is located

SECTION 3: The City Council affirms (i) that the IDOT Setback is not applicable to the Berm located on the Subject Property and that the location of the Berm complies with all other Naperville Municipal Code requirements as well as all other governmental bodies with current or future jurisdiction over the property; (ii) that upon redevelopment of the Subject Property no portion of the berm will have to be relocated; (iii) that the presently existing berm and landscaping thereon conforms to all city screening requirements applicable to the Subject Property; (iv) that at all time that the Property Owner or its successors are using the existing improvements on the Subject Property for its current purposes or for any uses permitted within the City's Industrial Zoning District that no modifications will be required to the Subject Property, including, but not limited to additional screening, landscaping, berming, relocation of access points or relocation of any improvements on the Subject Property; and (v) that should the Property Owner seek to redevelop the Subject Property in the future that it will be entitled to petition the City for reduced setbacks along North Aurora Road consistent with what exists today.

SECTION 4: If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such

section, paragraph, or provision, shall not affect any of the remaining provisions of this Resolution or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

SECTION 5: This Resolution shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2020.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk

EXHIBIT A

LEGAL DESCRIPTION

OF THE PART OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE NORTH LINE OF LANDS OWNED BY THE BURLINGTON NORTHERN RAILROAD COMPANY (FORMERLY THE CHICAGO, BURLINGTON AND QUINCY RAILROAD) AND LYING SOUTH OF THE CENTER LINE OF NORTH AURORA ROAD AND LYING WEST OF THE WEST LINE OF WESTON RIDGE INDUSTRIAL PARK, UNIT NO. 1 ASSESSMENT PLAT (ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1969 AS DOCUMENT R69-42494) (EXCEPT THEREFROM THE WEST 862.12 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE WEST LINE THEREOF, AND EXCEPT THEREFROM THE EAST 684.41 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE EAST LINE THEREOF), ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-16-101-029, 07-16-101-030, and 07-16-101-031

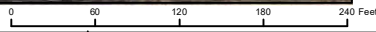
ADDRESS: 2404 NORTH AURORA ROAD, NAPERVILLE, IL 60563



NORTH AURORA RD

2404 NORTH AURORA RD

Property



Transportation, Engineering and Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 8/27/2020

Exhibit B
DEPICTION OF PROPERTY
2404 N. Aurora Rd (K-Five Construction)

This map should be used for reference only. The data is subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.



LEGAL DESCRIPTION OF CITY PARCEL:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860 and the point of beginning; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet; thence North 89 degrees 54 minutes 05 seconds West, a distance of 375.74 feet; thence North 89 degrees 52 minutes 02 seconds West, a distance of 344.90 feet to the west line of the grantor, according to said trustee's deed; thence North 0 degrees 08 minutes 00 seconds East along the west line of the grantor, according to said trustee's deed, a distance of 20.19 feet to the point of beginning.

Said parcel containing 0.335 acre, more or less.

Index No. 07-16-101-029 [part of]

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION EASEMENT:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet to the point of beginning; thence North 89 degrees 54 minutes 05 seconds West, a distance of 104.21 feet; thence South 0 degrees 05 minutes 55 seconds West, a distance of 5.00 feet; thence South 89 degrees 54 minutes 05 seconds East, a distance of 103.98 feet to the east line of the grantor, according to said trustee's deed; thence North 2 degrees 42 minutes 47 seconds East along the east line of the grantor, according to said trustee's deed, a distance of 5.01 feet to the point of beginning.

Said temporary easement containing 0.012 acre, more or less.

Said temporary easement to be used for construction purposes.

Index No. 07-16-101-029

COUNTRY GLENDEN RD

NORTH AURORA RD

2404 NORTH AURORA RD

20.19'

R.O.W. Acquired

5' Temporary Construction Easement

20.20'

0 50 100 150 200 Feet



Transportation, Engineering and Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 9/23/2020

Exhibit C
LEGAL DESCRIPTION AND DEPICTION OF CITY PARCEL & TEMPORARY EASEMENT
2404 N. Aurora Rd (K-Five Construction)

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