

ORDINANCE NO. O2019-\_\_

**AN ORDINANCE APPROVING AN EASEMENT AGREEMENT FOR A STORM SEWER WITH  
DAVID W. BIDDINGER AND LINDA A. BIDDINGER  
(27W650 Warrenville Road)**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, David W. Biddinger and Linda A. Biddinger (collectively, "Owner") own the property commonly known as 27W650 Warrenville Road within the City ("Property"); and

WHEREAS, the City desires to enter into an agreement with Owner pursuant to which the Owner agrees to grant a utility easement across the Property to the City for the construction, operation, and maintenance of underground utilities including, without limitation, storm sewer ("Easement Agreement").

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Easement Agreement with Owner;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Ordinance as if fully set forth in this Ordinance.

SECTION 2: Approval of Easement Agreement. The Easement Agreement is hereby approved in substantially the form attached to this Ordinance as Exhibit A.

SECTION 3: Authorization to Execute and Record Easement Agreement. The City Council hereby authorizes and directs the City Administrator to execute and the City Clerk to attest, on behalf of the City, the final Easement Agreement and directs the City Clerk, on behalf of the City, to record the executed Easement Agreement at the DuPage County Recorder of Deeds, following its execution and delivery to the City Clerk by the Owner.

SECTION 4: Effective Date. This Ordinance shall be in full force and effect following its passage and approval in the manner provided by law.

[VOTING RECORD AND SIGNATURE PAGE FOLLOWS]

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2019.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

#68103379\_v1

**EXHIBIT A**  
**EASEMENT AGREEMENT**

**THIS DOCUMENT PREPARED BY:**

Holland & Knight LLP  
131 South Dearborn Street, 30th Floor  
Chicago, IL 60603

**AFTER RECORDING RETURN TO:**

City of Warrenville  
28W701 Stafford Place  
Warrenville, Illinois 60555

Property Address:  
27W650 Warrenville Road  
Warrenville, IL 60555

P.I.N.s: 04-36-312-015  
04-36-312-016

*For Recorder's Use Only use Only*

**NON-EXCLUSIVE EASEMENT AGREEMENT  
FOR UNDERGROUND UTILITIES**

**THIS AGREEMENT** is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the City of Warrenville, an Illinois home rule municipal corporation (the "City"), and David W. Biddinger and Linda A. Biddinger (collectively, "Owner").

**IN CONSIDERATION OF** the mutual covenants and agreements set forth herein and pursuant to the City's home rule powers, the parties hereto agree as follows:

**1. BACKGROUND.**

A. The Owner is the owner of certain real estate commonly known as 27W650 Warrenville Road, City of Warrenville, County of Cook, State of Illinois, which real estate is legally described in **Exhibit A**, attached to, and by this reference made a part of, this Agreement (the "Subject Property").

B. The Owner and the City have determined that it is in their respective best interests to enter into this Agreement in order to grant to the City a perpetual non-exclusive easement over a portion of the Subject Property as described herein.

2. **GRANT AND USE OF EASEMENT.** The Owner grants, conveys, warrants, and dedicates to the City a perpetual non-exclusive easement in, at, over, along, across, through, upon, and under that portion of the Subject Property legally described on **Exhibit B** and depicted on **Exhibit C** each attached to, and by this reference made a part of, this Agreement (the "Easement Premises"), to survey, construct, operate, use, maintain, own, test, inspect, repair, remove, and replace or abandon in place (collectively the "Installation") underground utilities, including, without limitation, storm sewer and any appurtenances thereto (collectively, the "Facilities"), together with all reasonable rights of ingress and egress over, along, across, and upon the Subject Property necessary for the exercise of the rights granted herein. The City shall, at its sole cost and expense, complete the Installation of the Facilities in a good and workmanlike manner.

3. **GRANT AND USE OF TEMPORARY CONSTRUCTION EASEMENT.** The Owner grants, conveys, and warrants to the City and its agents, contractors, and representatives a temporary construction easement for the Installation of the Facilities in, at, over, along, across, through, upon and under that portion of the Property legally described in **Exhibit D** and depicted in **Exhibit E** each attached to, and by this reference made a part of, this Agreement ("Temporary Easement Premises"). The Temporary Easement Premises shall be used by the City only during periods of actual Installation activity and for any necessary restoration of the Easement Premises, as defined in Section 7 of this Covenant.

4. **HOLD HARMLESS.** The City agrees to hold the Owner harmless from all claims, causes of action, suits, damages, or demands that arise directly from the Installation, maintenance, and repair of the Facilities on the Easement Premises.

5. **RESERVED RIGHT.** The Owner reserves the right to use the Easement Premises in any manner that will not prevent or interfere in any way with the exercise by the City of the rights granted herein; provided, however, that the Owner shall not permanently or temporarily improve or obstruct the Easement Premises or cause any improvements or

obstructions to be constructed on the Easement Premises that would impair the exercise by the City of the rights granted herein without the express prior written consent of the City Administrator, which shall not be unreasonably withheld, conditioned or delayed.

6. **ADDITIONAL EASEMENTS.** The Owner shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises; provided, however, that any such other easements shall be subject to this Agreement and the rights granted hereby; and provided further, that the City Administrator shall have first consented in writing to the terms, nature, and location of any such other easements, which shall not be unreasonably withheld, conditioned or delayed.

7. **CITY RESTORATION.** Upon completion of any Installation, the City agrees to (a) replace and grade any and all topsoil removed by the City; (b) restore to condition immediately preceding the Installation any and all fences, roads, curbs, signage, lighting facilities, and improvements that are damaged or removed as a direct result of the Installation; and (c) replace any and all natural grass removed by seeding with a good quality seed.

8. **COVENANTS RUNNING WITH THE LAND.** The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, agreements and covenants running with the land, shall be recorded against the Subject Property and shall be binding upon and inure to the benefit of the Owner and the City and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all persons claiming under them. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements or covenants shall continue only

until 21 years after the death of the last survivor of the now living lawful descendants of the current Governor of the State of Illinois.

9. **ASSIGNMENT OF RIGHTS.** The City may assign its rights or delegate its duties under this Agreement to any assignee, agent, or contractor: (a) who is reasonably competent to exercise the rights granted herein and the obligations imposed herein; and (b) who makes adequate assurances to the Owner that any activity performed pursuant to such assignment or delegation shall be conducted in a good and workmanlike manner.

10. **AMENDMENT.** This Agreement may be modified, amended, or annulled only by the written agreement of the Owner and the City, and a copy or memorandum of such written agreement will be recorded in the Recorder of Deeds of DuPage County, Illinois.

11. **EXERCISE OF CITY RIGHTS; WAIVER.** The City is not required to exercise the rights granted herein except as it shall determine to be in its best interest. Failure by the City to exercise any right herein granted shall not be construed as a waiver of that right or any other right.

12. **RECORDATION.** This Agreement shall be recorded with the Recorder of Deeds of DuPage County, Illinois, and all contracts and deeds of conveyance relating to the Subject Property, or any part thereof, shall be subject to the provisions of this Agreement.

13. **HEADINGS.** The headings of the Sections herein are intended for reference only and are not intended to alter, amend or affect any of the terms or provisions of this Agreement.

14. **SEVERABILITY.** Invalidation of any one of these agreements, covenants and restrictions by a judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

15. **NOTICE.** Any notice to the Owner under this Agreement shall be given to the last name and address shown on the most recent real estate tax bill issued by the County Treasurer. Any notice to the City under this Covenant shall be given to:

City of Warrenville  
Attention: Deputy Public Works Director  
3S258 Manning Avenue  
Warrenville, Illinois 60555

19. **EXHIBITS.** Exhibits A through E attached to this Agreement are incorporated herein and made a part hereof by this reference.

20. **GOVERNING LAW.** This Covenant shall be governed by the internal laws, but not the conflicts of laws rules, of the State of Illinois.

*[Remainder of Page Intentionally Left Blank; Signature Pages Follow]*



**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed  
on the date first above written.

ATTEST:

DAVID W. BIDDINGER

\_\_\_\_\_

By:\_\_\_\_\_

ATTEST:

LINDA A. BIDDINGER

\_\_\_\_\_

By:\_\_\_\_\_

ATTEST:

CITY OF WARRENVILLE

\_\_\_\_\_

By:\_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF DU PAGE        )

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 he signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF DU PAGE        )

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 he signed, sealed and delivered the said instrument as his/her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF DU PAGE        )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, **DO HEREBY CERTIFY** that \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the City Administrator and the City Clerk of the City of Warrenville, and 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 he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

THAT PART OF LOTS 9 AND 10 BLOCK 10 IN FIRST ADDITION TO WARRENVILLE, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1927 AS DOCUMENT 231151 IN DUPAGE COUNTY, ILLINOIS.

Commonly known as: 27W650 Warrenville Road, Warrenville, IL 60555  
Permanent Real Estate Index Numbers: 04-36-312-015 and 04-36-312-016

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE EASEMENT PREMISES**

THAT PART OF LOTS 9 AND 10 BLOCK 10 IN FIRST ADDITION TO WARRENVILLE, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1927 AS DOCUMENT 231151 IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE NORTH 70 DEGREES 48 MINUTES 39 SECONDS WEST ALONG THE SOUTHERLY LINE OF LOT 10, A DISTANCE OF 56.01 FEET TO A POINT BEING 4.00 FEET EAST OF THE WEST LINE OF SAID LOT 10 AND SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 70 DEGREES 48 MINUTES 39 SECONDS WEST A DISTANCE OF 10.57 FEET TO A POINT 6.00 FEET WEST OF THE WEST LINE OF LOT 10; THENCE NORTH 00 DEGREES 16 MINUTES 10 SECONDS EAST PARALLEL WITH THE WEST LINE OF LOT 10 A DISTANCE OF 131.46 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 9, SAID POINT BEING 6.00 FEET WEST OF THE WEST LINE OF LOT 10; THENCE SOUTH 70 DEGREES 50 MINUTES 47 SECONDS EAST ALONG THE NORTHERLY LINE OF LOTS 9 AND 10 A DISTANCE OF 10.57 FEET TO A POINT 4.00 FEET EAST OF THE WEST LINE OF LOT 10; THENCE SOUTH 00 DEGREES 16 MINUTES 46 SECONDS WEST PARALLEL WITH THE WEST LINE OF LOT 10 A DISTANCE OF 131.46 FEET TO THE POINT OF BEGINNING.

**EXHIBIT C**

**DEPICTION OF THE EASEMENT PREMISES**

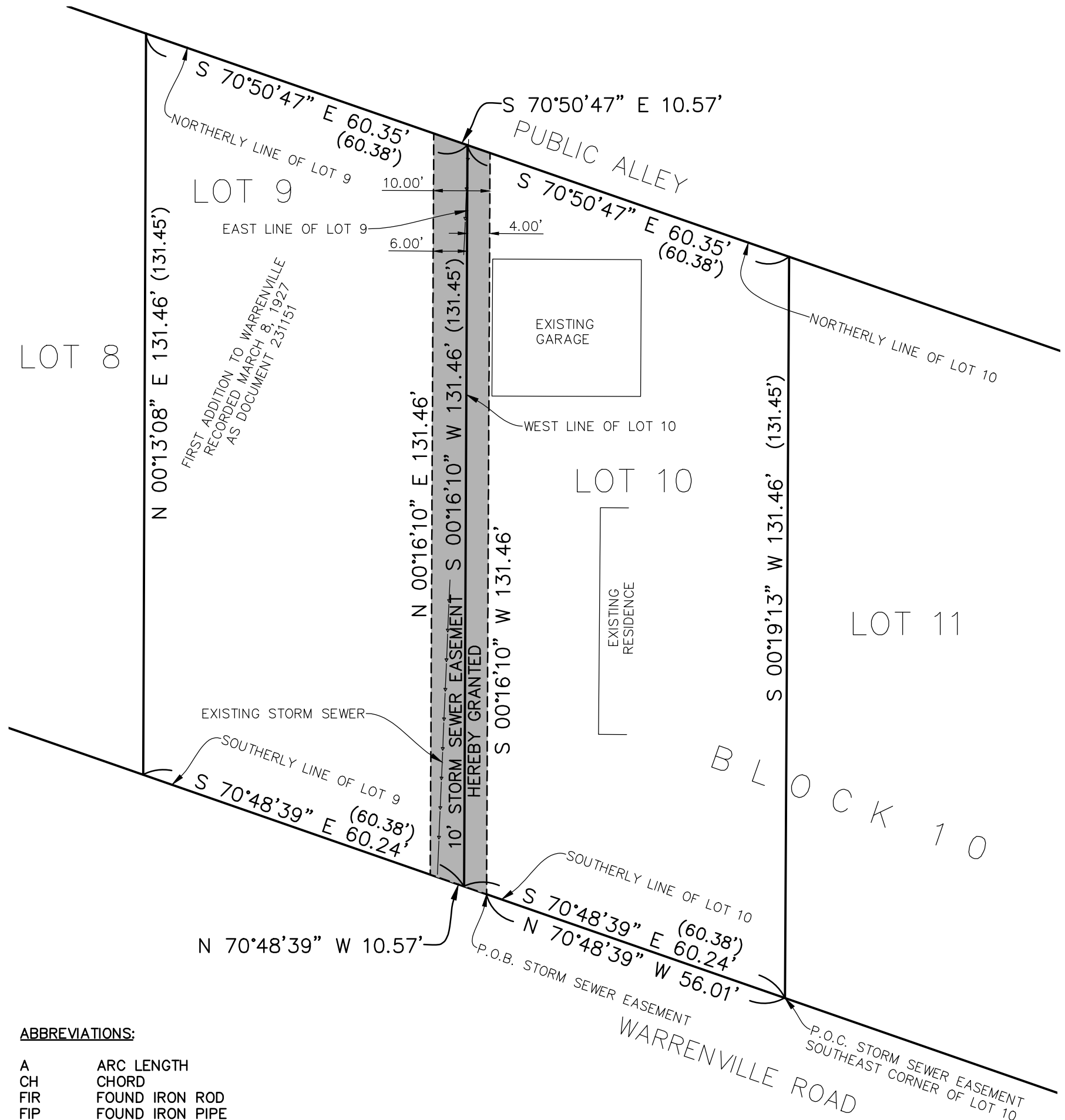
# STORM SEWER EASEMENT EXHIBIT

THAT PART OF LOTS 9 AND 10 BLOCK 10 IN FIRST ADDITION TO WARRENVILLE, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1927 AS DOCUMENT 231151 IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 10; THENCE NORTH 70 DEGREES 48 MINUTES 39 SECONDS WEST ALONG THE SOUTHERLY LINE OF LOT 10, A DISTANCE OF 56.01 FEET TO A POINT BEING 4.00 FEET EAST OF THE WEST LINE OF SAID LOT 10 AND SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 70 DEGREES 48 MINUTES 39 SECONDS WEST A DISTANCE OF 10.57 FEET TO A POINT 6.00 FEET WEST OF THE WEST LINE OF LOT 10; THENCE NORTH 00 DEGREES 16 MINUTES 10 SECONDS EAST PARALLEL WITH THE WEST LINE OF LOT 10 A DISTANCE OF 131.46 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 9, SAID POINT BEING 6.00 FEET WEST OF THE WEST LINE OF LOT 10; THENCE SOUTH 70 DEGREES 50 MINUTES 47 SECONDS EAST ALONG THE NORTHERLY LINE OF LOTS 9 AND 10 A DISTANCE OF 10.57 FEET TO A POINT 4.00 FEET EAST OF THE WEST LINE OF LOT 10; THENCE SOUTH 00 DEGREES 16 MINUTES 46 SECONDS WEST PARALLEL WITH THE WEST LINE OF LOT 10 A DISTANCE OF 131.46 FEET TO THE POINT OF BEGINNING.

COMMON ADDRESS: 27W650 WARRENVILLE RD., WARRENVILLE, ILLINOIS

P.I.N.: 04-36-312-015, 04-36-312-016



**ABBREVIATIONS:**

- A ARC LENGTH
- CH CHORD
- FIR FOUND IRON ROD
- FIP FOUND IRON PIPE
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCING
- R RADIUS
- R.O.W. RIGHT-OF-WAY
- XXX.XX' MEASURED DIMENSION
- (XXX.XX') RECORD DIMENSION



**ENGINEERING  
RESOURCE  
ASSOCIATES, INC.**  
CONSULTING ENGINEERS, SCIENTISTS  
& SURVEYORS

35701 WEST AVENUE, SUITE 150  
WARRENVILLE, ILLINOIS 60555  
PHONE (630) 393-3060  
FAX (630) 393-2152

2416 GALEN DRIVE  
CHAMPAIGN, ILLINOIS 61821  
PHONE (217) 351-6268  
FAX (217) 355-1902

**BASIS OF BEARINGS:**

ILLINOIS STATE PLANE  
COORDINATE SYSTEM (EAST ZONE)  
NAD83



SCALE: 1"=20'

**EXHIBIT D**

**LEGAL DESCRIPTION OF THE TEMPORARY EASEMENT PREMISES**

THAT PART OF LOTS 9 AND 10 BLOCK 10 IN FIRST ADDITION TO WARRENVILLE, BEING A SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1927 AS DOCUMENT 231151 IN DUPAGE COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 9; THENCE SOUTH 70 DEGREES 48 MINUTES 39 SECONDS EAST ALONG THE SOUTHERLY LINE OF LOT 9 A DISTANCE OF 32.76 FEET TO A POINT 26.00 FEET WEST OF THE EAST LINE OF LOT 9 AND SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 16 MINUTES 10 SECONDS EAST PARALLEL WITH THE EAST LINE OF LOT 9 A DISTANCE OF 131.44 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 9; THENCE SOUTH 70 DEGREES 50 MINUTES 47 SECONDS EAST ALONG THE NORTHERLY LINE OF LOT 9 A DISTANCE OF 21.14 FEET TO A POINT 6.00 FEET WEST OF THE EAST LINE OF LOT 9; THENCE SOUTH 00 DEGREES 16 MINUTES 10 SECONDS WEST PARALLEL WITH THE EAST LINE OF LOT 9 A DISTANCE OF 131.46 FEET TO A POINT ON THE SOUTHERLY LINE OF LOT 9; THENCE NORTH 70 DEGREES 48 MINUTES 39 SECONDS WEST ALONG THE SOUTHERLY LINE OF LOT 9 A DISTANCE OF 21.14 FEET TO THE POINT OF BEGINNING.

**EXHIBIT E**

**DEPICTION OF TEMPORARY EASEMENT PREMISES**



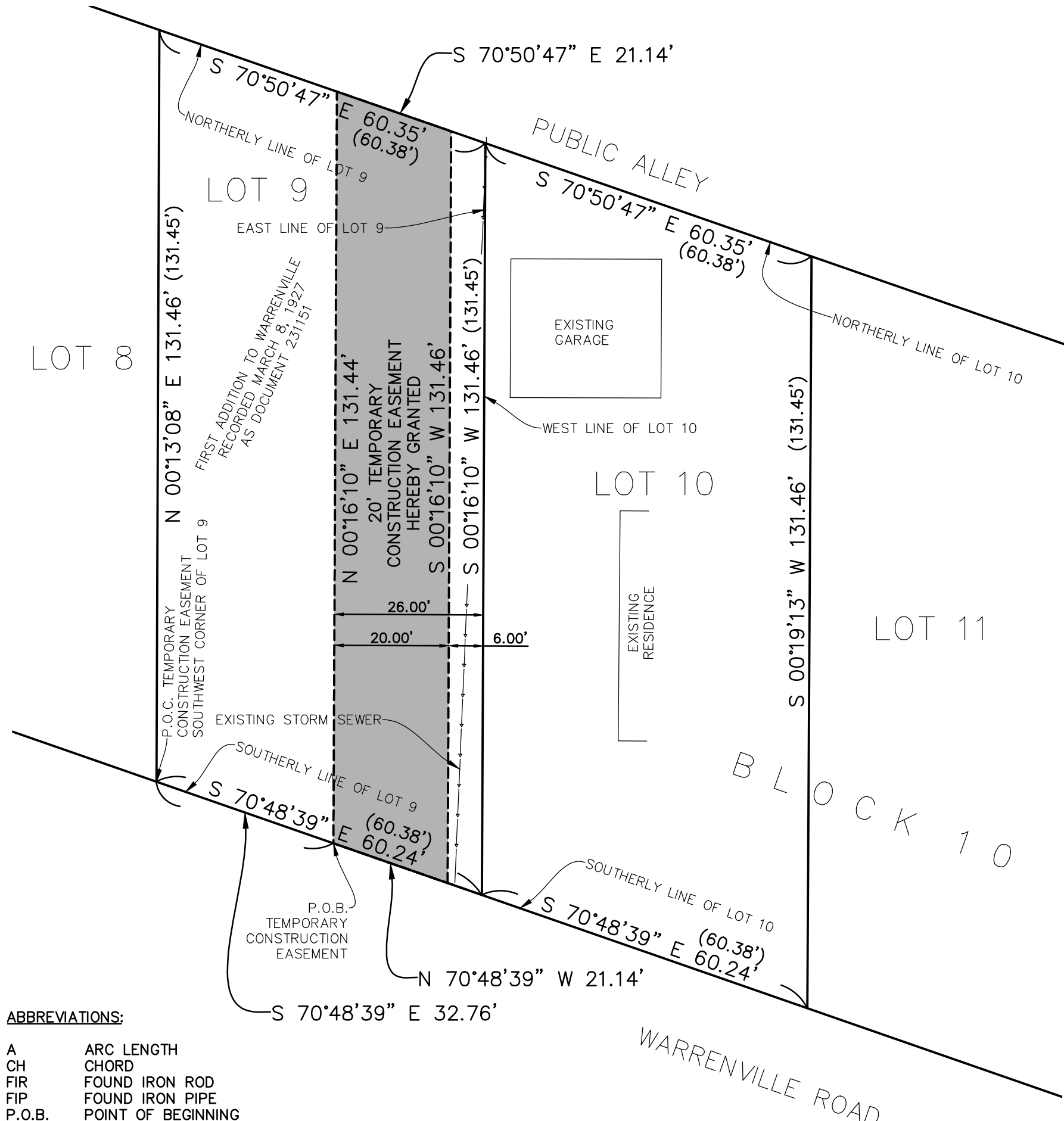
# TEMPORARY CONSTRUCTION EASEMENT EXHIBIT

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COMMON ADDRESS: 27W650 WARRENVILLE RD., WARRENVILLE, ILLINOIS

P.I.N.: 04-36-312-015



**ABBREVIATIONS:**

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- R.O.W. RIGHT-OF-WAY
- XXX.XX' MEASURED DIMENSION
- (XXX.XX') RECORD DIMENSION

**BASIS OF BEARINGS:**

ILLINOIS STATE PLANE  
COORDINATE SYSTEM (EAST ZONE)  
NAD83



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