

ORDINANCE NO. O2022-21

AN ORDINANCE APPROVING AN EASEMENT AGREEMENT
FOR STORM SEWER IMPROVEMENTS AT 27W760 GREENVIEW AVENUE

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, in order to provide for better storm water drainage, the City has identified the need to improve stormwater drainage in Greenview Avenue and, specifically, through 27W760 Greenview Avenue in the City ("**Property**") by installing storm sewer mains and related improvements (collectively, "**Storm Sewer Improvements**"); and

WHEREAS, the City desires to enter into an easement agreement ("**Easement Agreement**") with the owner ("**Owner**") of the Property pursuant to which the Owner agrees to grant a utility easement across portions of the Property to the City for the construction, operation, and maintenance of the Storm Sewer Improvements; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve and authorize the execution of an Easement Agreement with the 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 City Council hereby approves and authorizes the City to enter into an Easement Agreement with the Owner in substantially the form attached to this Ordinance as **Exhibit A**, and in a final form to be approved by the City Administrator and the City Attorney.

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 _____, 2022.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ____ day of _____, 2022.

MAYOR

ATTEST:

CITY CLERK

EXHIBIT A

EASEMENT AGREEMENT

PREPARED BY AND AFTER
RECORDING RETURN TO:
Brooke D. Lenneman
Elrod Friedman LLP
325 N. LaSalle Street, Suite 450
Chicago, IL 60654

For Recorder's Use Only

**NON-EXCLUSIVE PERMANENT AND TEMPORARY EASEMENT AGREEMENT
FOR THE INSTALLATION AND MAINTENANCE OF STORM SEWER FACILITIES**
(27W760 Greenview Avenue, Warrenville, Illinois)

THIS AGREEMENT (“*Agreement*”) is dated as of this ____ day of _____, 2022 (“*Effective Date*”), by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation (“*City*”), and **TIMOTHY W. LOVSTAD** (“*Owner*”) (collectively, the City and the Owner are the “*Parties*”).

IN CONSIDERATION OF the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration the receipt and sufficiency of which is acknowledged by the Parties and pursuant to the City's home rule powers, the Parties agree as follows:

SECTION 1. BACKGROUND.

A. The Owner is the owner of certain real estate commonly known as 27W760 Greenview Avenue, Warrenville, Illinois and legally described in **Exhibit A**, attached to and made a part of this Agreement (“*Property*”).

B. The Property is currently improved with a single-family residence and a detached garage.

C. In order to improve the storm water drainage on the Property and in the surrounding neighborhood, the City desires to install a storm sewer main and related improvements on a portion of the Property.

{00126569.2}

D. The Owner and the City have determined that it is in their respective best interests to enter into this Agreement in order to provide the City with a sufficient property interest in the Property to fulfill the purposes described in this Agreement.

SECTION 2. GRANT AND USE OF EASEMENT. The Owner hereby grants, conveys, warrants, and dedicates to the City perpetual easement in, at, over, along, across, through, upon, and under that portion of the Property legally described and depicted on **Exhibit B**, attached to and made a part of this Agreement (“*Easement Premises*”) to survey, construct, operate, use, maintain, own, test, inspect, repair, enlarge, renew, alter, replace, remove or abandon in place (collectively, “*Installation*”) a storm sewer main and any attachments, equipment, and appurtenances thereto (collectively, “*Facilities*”), together with all reasonable rights of ingress and egress over, along, across, and upon the Property necessary for the exercise of the rights granted herein. The City must, at its sole cost and expense, complete any Installation of the Facilities in a good and workmanlike manner.

SECTION 3. GRANT OF TEMPORARY CONSTRUCTION EASEMENT. The Owner hereby grants and conveys to the City a temporary construction easement (“*Temporary Easement*”) in, upon, over, under, through, along, and across those portions of the Property depicted on **Exhibit B** to this Agreement (“*Temporary Easement Premises*”) for the purpose of completing the Installation of the Facilities. The Temporary Easement granted pursuant to this Section 3 may only be used during periods of actual Installation activities and for any necessary restoration of the Temporary Easement Premises. The Temporary Easement Premises not be used or operated in a manner that materially interferes with the Owner’s use of the Property, or with the Owner’s use of the Property; provided, however, that the initial construction of the Facilities is not to be considered material interference.

SECTION 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 of the Facilities by the City on the Temporary Easement Premises or Easement Premises.

SECTION 5. RESERVED RIGHT. The Owner reserves the right to use the Temporary Easement Premises and 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 must not damage, destroy, or permanently or temporarily improve or obstruct the Easement Premises with anything that cannot easily be removed or cause any improvements or obstructions to be constructed on the Easement Premises with a permanent foundation.

SECTION 6. ADDITIONAL EASEMENTS. The Owner has the right to grant other non-exclusive easements over, along, across or upon the Temporary Easement Premises and the Easement Premises; provided, however, that any such other easements will be subject to this Agreement and the rights granted in this Agreement; and provided further, that the City Administrator must first consent in writing to the terms, nature, and location of any such other easements.

SECTION 7. CITY RESTORATION. Upon completion of any Installation activity by the City, the City agrees to: (a) replace and grade any and all topsoil removed by the City; (b) restore or repair all fences, roads, plantings, and landscaping that are damaged or removed as a direct result of Installation, as nearly as practicable to their condition immediately preceding the Installation activity; (c) replace any and all sod removed with sod of like quality; and (d) replace any and all natural grass removed by seeding with a good quality seed. Notwithstanding anything to the contrary contained in this Section 7, the City is not responsible for restoring, repairing, or replacing any trees on the Temporary Easement Premises or Easement Premises or that have root structures in or adjacent to the Easement Premises that are damaged or destroyed as a result of any Installation of the Facilities.

SECTION 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 are and will be easements, rights, restrictions, agreements and covenants running with the land, are to be recorded against the Property, and are 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 Temporary Easement Premises and the Easement Premises 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 will 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.

SECTION 9. ASSIGNMENT OF RIGHTS. The Owner agrees that the City may assign its rights or delegate its duties under this Agreement to any assignee: (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 will be conducted in a good and workmanlike manner.

SECTION 10. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement must be given by the Parties by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally-recognized overnight delivery service, addressed as stated in this Section 10.A. The address of any party may be changed by written notice to the other Parties. Any mailed notice will be deemed to have been given and received within three days after the same has been mailed and any notice given by overnight courier will be deemed to have been given and received within 24 hours after deposit. Notices and communications to the parties must be addressed to, and delivered at, the following addresses:

If to the City: City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois 60555
Attention: Philip Kuchler, Public Works Director

with a copy to: Elrod Friedman LLP
325 N. LaSalle Street, Suite 450
Chicago, IL 60654
Attention: Brooke D. Lenneman

If to Owner: Timothy W. Lovstad
27W760 Greenview Avenue
Warrenville, Illinois 60555

with a copy to: _____

B. Amendment. No amendment or modification to this Agreement will be effective until it is reduced to writing and approved and executed by the Parties to this Agreement in accordance with all applicable statutory procedures.

C. Authority to Execute. The City hereby warrants and represents to the Owner that: (i) the persons executing this Agreement on its behalf have been properly authorized to do so by the City; (ii) the City has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement; (iii) all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken; and (iv) neither the execution of this Agreement nor the performance of the obligations assumed by the City will violate any statute, law, restriction, court order, or agreement to which the City is subject. The Owner hereby warrants and represents to the City that: (i) the Owner is the record and beneficial owner of fee simple title to the Property; (ii) no other person has any legal, beneficial, contractual, or security interest in the Property; (iii) the Owner has the full and complete right, power, and authority to enter into this Agreement, to agree to the terms, provisions, and conditions set forth in this Agreement, and to bind the Property as set forth in this Agreement; (iv) all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken; and (v) neither the execution of this Agreement nor the performance of the obligations assumed by the Owner will violate any statute, law, restriction, court order, or agreement to which the Owner or the Property are subject.

D. Recording. The City will record this Agreement against the Property with the Office of the DuPage County Recorder's Office promptly following the full execution of this Agreement by the Parties.

E. Non-Waiver. The City and the Owner will be under no obligation to exercise any of the rights granted to each of them in this Agreement. The failure of any party to exercise at any

time any right granted to such party is not to be deemed or construed to be a waiver of that right, nor will the failure void or affect any party's right to enforce that right or any other right.

F. Interpretation. This Agreement is to be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement is to be construed as though the Parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party is not applicable to this Agreement.

G. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the easements granted pursuant to this Agreement. All representations and warranties contained in this Agreement will survive the expiration and termination of the permanent and temporary easement rights herein granted.

IN WITNESS WHEREOF, the City and Owner have caused this Agreement to be executed as of the Effective Date by their respective duly authorized representatives.

TIMOTHY LOVSTAD

ATTEST:

CITY OF WARRENVILLE

Julie Clark, City Clerk

By: _____
John M. Coakley, City Administrator

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

This instrument was acknowledged before me on _____, 2022, by John M. Coakley, City Administrator of the City of Warrenville, an Illinois municipal corporation, and by Julie Clark, the City Clerk of said municipal corporation.

Signature of Notary

SEAL
My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

This instrument was acknowledged before me on _____, 2022, by Timothy Lovstad, known to me to be the person whose name is subscribed to the foregoing instrument and who did acknowledge that they executed the above instrument, duly authorized, voluntarily and as their free act and deed.

Signature of Notary

SEAL
My Commission expires: _____

EXHIBIT A

Legal Description of the Property

LOT 9 ROBERT BARTLETT'S PARK VIEW, BEING A SUBDIVISION IN THE EAST QUARTER OF SECTION 35 AND IN THE WEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1948, AS DOCUMENT 538028, IN DUPAGE COUNTY, ILLINOIS.

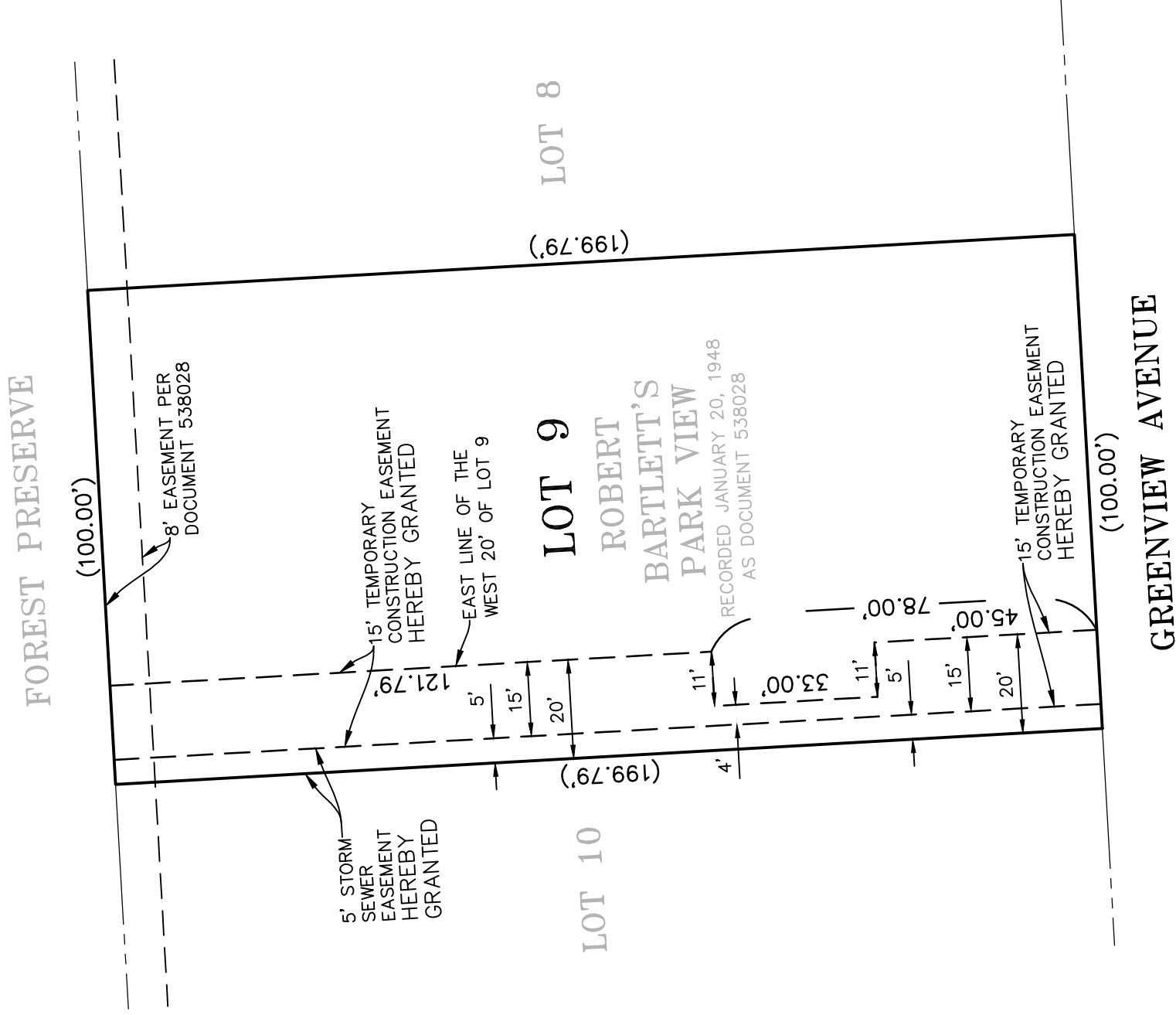
Commonly Known as 27W760 Greenview Avenue, Warrenville, Illinois 60555

Permanent Real Estate Index No. 04-36-101-003

EXHIBIT B

LEGAL DESCRIPTIONS AND DEPICTION OF
PERMANENT AND TEMPORARY EASEMENTS

STORM SEWER EASEMENT EXHIBIT



OVERALL PROPERTY DESCRIPTION

LOT 9 IN ROBERT BARTLETT'S PARK VIEW, BEING A SUBDIVISION IN THE EAST QUARTER OF SECTION 35 AND IN THE WEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1948, AS DOCUMENT 538028, IN DUPAGE COUNTY, ILLINOIS.

STORM SEWER EASEMENT DESCRIPTION

THE WEST 5 FEET OF LOT 9 IN ROBERT BARTLETT'S PARK VIEW, BEING A SUBDIVISION IN THE EAST QUARTER OF SECTION 35 AND IN THE WEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1948, AS DOCUMENT 538028, IN DUPAGE COUNTY, ILLINOIS.

TEMPORARY CONSTRUCTION EASEMENT DESCRIPTION

THE EAST 15 FEET OF THE WEST 20 FEET EXCEPTING THEREFROM, THE EAST 11 FEET OF THE NORTH 33 FEET OF THE SOUTH 78 FEET OF LOT 9 IN ROBERT BARTLETT'S PARK VIEW, BEING A SUBDIVISION IN THE EAST QUARTER OF SECTION 35 AND IN THE WEST QUARTER OF SECTION 36, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 20, 1948, AS DOCUMENT 538028, IN DUPAGE COUNTY, ILLINOIS.

ABBREVIATIONS

E	EAST
N	NORTH
S	SOUTH
W	WEST
(XXX.XX)	RECORD INFORMATION
XXX.XX	MEASURED INFORMATION



SCALE: 1"=30'
 DATE: 05-25-2022
 JOB NO: W21273.00
 DRAWN BY: SDS
 APPROVED BY: CCG

PREPARED FOR:
CITY OF WARRENVILLE

3S701 WEST AVENUE, SUITE 150
 WARRENVILLE, ILLINOIS 60555
 PHONE (630) 393-3060
 FAX (630) 393-2152

ADDRESS:

**27W760 GREENVIEW AVE.
 WARRENVILLE, ILLINOIS**