

ORDINANCE NO. O2025-    

**AN ORDINANCE APPROVING AN EASEMENT AGREEMENT FOR THE INSTALLATION AND MAINTENANCE OF UNDERGROUND ELECTRICAL FACILITIES (3S660 Route 59 and 3S700 Route 59)**

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, TZBP Warrenville LLC ("**TZBP**") owns the property commonly known as 3S660 Route 59 in the City ("**TZPB Property**"), which is currently improved with a Thorntons gas station; and

WHEREAS, the City owns the property commonly known as 3S700 Route 59 in the City ("**City Property**") on which the City is constructing a new water tower; and

WHEREAS, the City desires to enter into an agreement with TZBP, pursuant to which TZP will grant a utility easement across the TZPB Property for the installation and maintenance of underground electrical facilities to serve the City Property ("**Easement Agreement**"); 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 the Easement Agreement with TZBP;

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 Mayor 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's Office, following its execution and delivery to the City Clerk by TZBP.

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 Signatures on Following Page]*

PASSED THIS \_\_\_\_ day of \_\_\_\_\_, 2025

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
MAYOR

ATTEST:

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

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

**PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Elrod Friedman LLP  
Attention: Brooke Lenneman  
325 N. LaSalle Street, Ste. 450  
Chicago, Illinois 60654

PIN(s):  
04-33-405-039;  
04-33-405-040

*For Recorder's Use Only*

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

**THIS AGREEMENT** is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the **CITY OF WARRENVILLE**, an Illinois home rule municipal corporation ("**Lot 2 Owner**"), and TZBP Warrenville LLC, an Illinois limited liability company ("**Lot 1 Owner**") (Lot 2 Owner and Lot 1 Owner are, collectively, the "**Parties**").

**IN CONSIDERATION OF** the mutual covenants and agreements set forth herein and pursuant to Lot 2 Owner's statutory and home rule powers, the Parties agree as follows:

1. **BACKGROUND.**

A. Lot 1 Owner is the owner of certain real estate commonly known as 3S660 Route 59, Warrenville, County of DuPage, State of Illinois, and legally described in **Exhibit A**, attached to, and by this reference made a part of, this Agreement ("**Lot 1**").

B. Lot 2 Owner is the owner of certain real estate commonly known as 3S700 Route 59, Warrenville, County of DuPage, State of Illinois, and legally described in Exhibit A ("**Lot 2**").

C. There is an existing 10-foot-wide perpetual, non-exclusive sanitary sewer easement in upon, over, across, and under that portion of Lot 1 as depicted on that certain Ayleen

{00121273.1}

Plat of Resubdivision, January 30, 2023 as Document R2023-005775 for the installation, maintenance, repair, and replacement of a sanitary sewer main and related facilities serving improvements on Lot 2 ("**Sanitary Sewer Easement**").

D. New electrical service facilities must be installed to serve improvements on Lot 2.

E. In order to avoid the installation of multiple new poles and overhead electrical service lines along the north and west portions of Lot 1, Lot 1 Owner and Lot 2 Owner desire to enter into this Agreement to grant an additional utility easement upon, over, through and across Lot 1 for the benefit of Lot 2 in the same location as the Sanitary Sewer Easement for the installation and maintenance of underground electrical facilities to serve Lot 2.

2. **GRANT AND USE OF UTILITY EASEMENT.** Lot 1 Owner grants, conveys, warrants, and dedicates to Lot 2 Owner a perpetual non-exclusive easement in, at, over, along, across, through, upon, and under that portion of Lot 1 in the same location as the Sanitary Sewer Easement and legally described and depicted on **Exhibit B**, attached to, and by this reference made a part of, this Agreement ("**Easement Premises**"), to survey, construct, operate, use, own, test, inspect, repair, remove, replace, and maintain (collectively, "**Installation**") underground electric utility facilities, the top of which must be no less than five (5) feet beneath the ground surface as it now exists, and any appurtenances thereto, to serve improvements on Lot 2 ("**Facilities**"). Lot 2 Owner shall, at its sole cost and expense, complete the Installation of the Facilities in a diligent manner.

3. **TEMPORARY EASEMENT FOR CONSTRUCTION; EASEMENTS FOR REPAIR, MAINTENANCE, SERVICES AND EMERGENCY.** Lot 1 Owner hereby grants to Lot 2 Owner a non-exclusive limited ground and aerial easement, right-of-way, right-of-access, right-of-entry and right-of-use and for ingress and egress over, upon and through an area extending ten feet (10') on each side of the Easement Premises for the purpose of (i) Lot 2 Owner's entry upon Lot 1 for the installation, tapping into, connecting with and/or utilizing any of the Facilities located within the Easement Premises; (ii) Lot 2 Owner's operation, inspection, testing, repair and

replacement of any facility, equipment, line, system and the like which is located within the Easement Premises; and (iii) as otherwise necessitated by any emergency involving danger to life, limb or property as reasonably determined in good faith by Lot 2 Owner.

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 on the Easement Premises.

5. **RESERVED RIGHT**. Lot 1 Owner reserves the right to use Easement Premises for any purpose which is not inconsistent with the easement rights granted in this Agreement, including without limitation the installation and maintenance of landscaping and/or driveways, curb cuts, parking areas and related improvements, and drive through improvements and related equipment, including but not limited to, menu boards, speakers, bollards, curbing and awnings; provided, however, that no buildings may be constructed on or within the Easement Premises.

6. **NO OBLIGATION**. The City's acceptance of the easement rights granted in this Agreement in no way obligate the City conduct any Installation of the Facilities. Nothing in this Agreement is intended to transfer ownership of the Easement Premises to Lot 2 Owner.

7. **ADDITIONAL EASEMENTS**. Lot 1 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.

8. **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, plantings, and improvements that are damaged or removed as a direct result of the Installation; (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.

9. **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 Lot 1 and Lot 2 and shall be binding upon and inure to the benefit of the Lot 1 Owner and Lot 2 Owner and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of Lot 1 and Lot 2, or any portions 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.

10. **ASSIGNMENT OF RIGHTS.** Lot 1 Owner agrees that Lot 2 Owner may assign its rights or delegate its duties under this Agreement to any assignee, including, without limitation, Commonwealth Edison: (a) who is reasonably competent to exercise the rights granted herein and the obligations imposed herein; and (b) who makes adequate assurances to Lot 1 Owner that any activity performed pursuant to such assignment or delegation shall be conducted in a diligent manner.

11. **AMENDMENT.** This Agreement may be modified, amended, or annulled only by the written agreement of the Parties.

12. **EXHIBITS.** Exhibits A and B attached to this Agreement are incorporated herein and made a part hereof by this reference.

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

ATTEST:

\_\_\_\_\_

ATTEST:

\_\_\_\_\_

**LOT 1 OWNER**

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

**LOT 2 OWNER**

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

ACKNOWLEDGEMENTS

STATE OF ILLINOIS        )  
  )  
COUNTY OF DUPAGE        )        SS

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Warrenville, an Illinois municipal corporation, and by \_\_\_\_\_, of the City Clerk of said municipal corporation.

\_\_\_\_\_  
Signature of Notary

SEAL

My Commission expires: \_\_\_\_\_

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STATE OF ILLINOIS        )  
  )  
COUNTY OF DUPAGE        )        SS

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, \_\_\_\_\_ of TZBP Warrenville LLC, and \_\_\_\_\_, Secretary of said corporation, which individuals are known to me to be the identical persons who signed the foregoing instrument as such officers of the corporation for and in behalf of said corporation, and that they executed the same as their free and voluntary act and deed and as the free and voluntary act of the corporation, for the uses and purposes herein mentioned.

\_\_\_\_\_  
Signature of Notary

SEAL

My Commission expires: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Lot 1**

BEING LOT 1 IN THE AYLEEN PLAT OF RESUBDIVISION, BEING IN THE EAST HALF OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 30, 2023 AS DOCUMENT R2023-005775

**PIN NUMBER:** 04-33-405-039

**COMMON ADDRESS:** 3S660 Route 59  
Warrenville, Illinois 60555

**Legal Description of Lot 2**

BEING LOT 2 IN THE AYLEEN PLAT OF RESUBDIVISION, BEING IN THE EAST HALF OF SECTION 33, TOWNSHIP 39 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 30, 2023 AS DOCUMENT R2023-005775

Commonly Known as 3S700 Route 59, Warrenville, Illinois 60555

Permanent Real Estate Index No. 04-33-405-040

**EXHIBIT B**  
**Easement Premises**

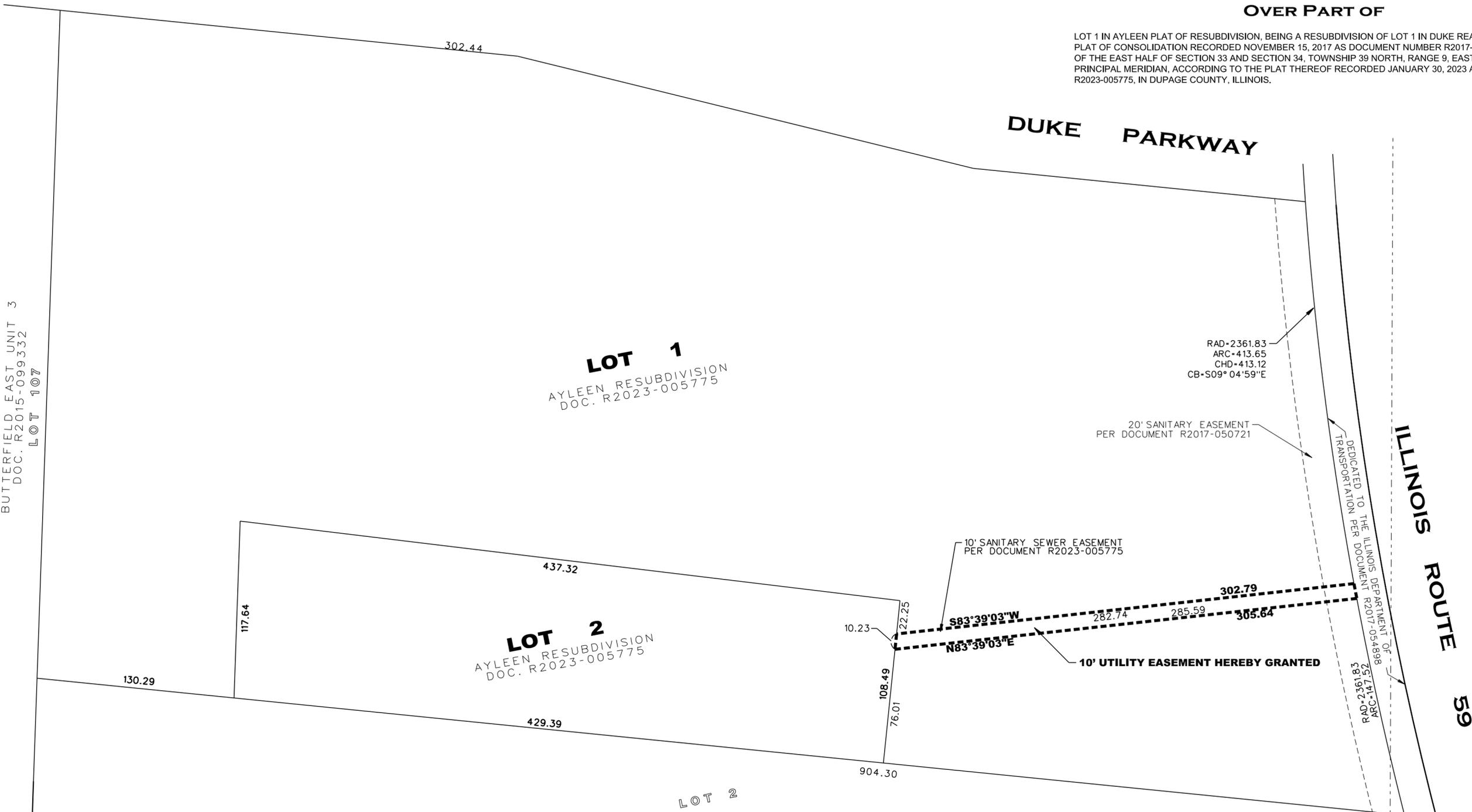
PIN 04-33-405-039

# EASEMENT EXHIBIT

OVER PART OF

LOT 1 IN AYLEEN PLAT OF RESUBDIVISION, BEING A RESUBDIVISION OF LOT 1 IN DUKE REALTY UNIT 6 PLAT OF CONSOLIDATION RECORDED NOVEMBER 15, 2017 AS DOCUMENT NUMBER R2017-117524, OF PART OF THE EAST HALF OF SECTION 33 AND SECTION 34, TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 30, 2023 AS DOCUMENT R2023-005775, IN DUPAGE COUNTY, ILLINOIS.

BUTTERFIELD EAST UNIT 3  
DOC. R2015-099332  
LOT 107



**LOT 1**  
AYLEEN RESUBDIVISION  
DOC. R2023-005775

**LOT 2**  
AYLEEN RESUBDIVISION  
DOC. R2023-005775

**LOT 2**  
ANTHONY PACELLI'S ASSESSMENT PLAT  
DOCUMENT 540223



**BASIS OF BEARING**

NAD 83, ILLINOIS STATE PLANE, EAST ZONE  
AS DETERMINED BY CORS NETWORK

Rev	Date	Description	By	<b>EASEMENT EXHIBIT</b>		
1	1-9-25	REVISED PER REVIEW	JCV	LOCATION: SOUTHWEST CORNER ROUTE 59 AND DUKE PARKWAY WARRENVILLE, IL		
PREPARED FOR:				CITY OF WARRENVILLE 3S258 MANNING AVE WARRENVILLE, ILLINOIS 60555		
<b>WEBSTER, McGRATH &amp; AHLBERG LTD.</b>				JOB #:	DATE:	SCALE:
 LAND SURVEYING - CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE <i>Over a Century of Service to our Clients</i>				41516	11-29-2024	1"=50'
2100 Manchester Road, Building A, Suite 203 Wheaton, Illinois 60187 ph: (630)668-7603 web: www.wmatld.com Design Firm License No. 184-003101				SURV:	DRAWN:	DESIGN:
				XXX	JCV	XXX
				FILE #:	C-26199-ESMT	SHEET #:
						1 of 1