

REVOCABLE RIGHT-OF-WAY COVENANT AGREEMENT FORM

PREPARED BY AND RETURN TO:

City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois 60555
c/o Public Works Director

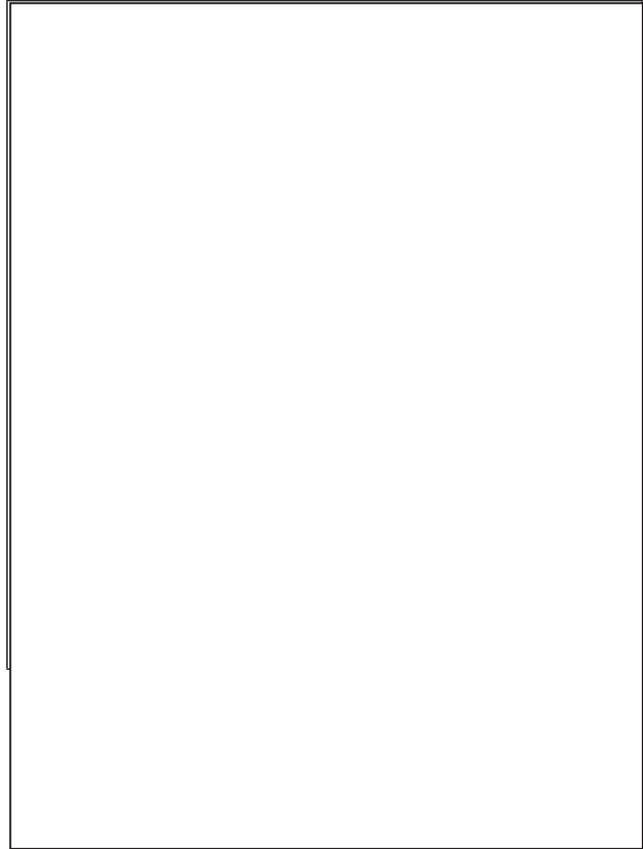
Revocable Right-of-Way Covenant Agreement # _____

Property Address: _____
3S230 Warren Ave

Warrenville IL 60555

P.I.N. 04-35-111-001 _____

Permit # _____



CITY OF WARRENVILLE

REVOCABLE RIGHT-OF-WAY COVENANT AGREEMENT

THIS REVOCABLE RIGHT-OF-WAY COVENANT AGREEMENT (the "Agreement") is made and entered into by and between Edmund Lowrie (the "Owner"), the legal title owner of the property legally described below (the "Property"), and the City of Warrenville (the "City") pursuant to Section 7-2-2 of the City of Warrenville City Code."

WITNESSETH:

1. The Property, which is subject to the terms, conditions, and provisions of this Agreement, is legally described as follows:

Legal Description:

LOT 1 IN BLOCK 2 OF RAY'S SUBDIVISION OF LOT 1 AND PART OF LOT 2 IN BLOCK 8, IN MANNING'S WARRENVILLE SUBDIVISION, A SUBDIVISION OF PART OF SECTIONS 26, 27, 34 AND 35 TOWNSHIP 39 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, REFERENCE BEING HAD TO A PLAT OF SAID RAY'S SUBDIVISION RECORDED DECEMBER 30, 1926, IN BOOK 15 OF PLATS, PAGE 89 IN DUPAGE COUNTY, ILLINOIS.

P.I.N. No.: 04-35-111-001

Common Address: 3S230 Warren Ave, Warrenville IL 60555

2. The Owner or the authorized representative of the Owner has herein applied for a Revocable Right-of-Way Permit for permission and authority to occupy, and to do certain work and install certain facilities (collectively, the "Work"), defined further below, on and/or in the City of Warrentville owned right-of-way known as Manning Avenue, and located adjacent to the Owner's property. The Work is described in detail below and/or on the sketch or plans attached hereto as Exhibit A (please electronically submit one complete set of this application and all plans/sketches to the City of Warrentville Community Development Department at 3S258 Manning Avenue):

Encroachment of approximately 3' of an ADA access aisle serving an ADA parking stall at 3S230 Warren Ave. Total access aisle measures approximately 3' x 18' or 54 square feet. Proposed improvements to include hardscape improvements to meet slope requirements and striping.

3. The Work authorized by this Agreement shall be completed within _____ days after the date of approval by the City; otherwise, this Agreement will be considered null and void. This Agreement covers the operation and presence of specified equipment, material, or facility on the right-of-way which may be related to the authorized work and authorizes specific structures and facilities to remain in the City's right-of-way upon satisfactory completion of the Work.

4. Nothing in this Agreement shall be construed to constitute a dedication of any portion of the structures and facilities installed or constructed in the City's right-of-way pursuant to this Permit to, or an acceptance thereof by, the City, nor shall anything in this Agreement be construed to constitute a dedication of, or other conveyance of property rights in, any portion of the City's right-of-way to the Owner.

5. This Agreement is subject to and includes the conditions and restrictions outlined herein, which are agreed to by the Owner. The agent and person signing this Agreement represent(s) and warrant(s) to the City that he/she is authorized to sign this application and bind the Owner to the following conditions:

A. If the Work includes the planting of a street tree or the installation of other acceptable landscaping improvements, said plantings and related landscaping improvements shall strictly conform with the following criteria:

1. All street trees planted in Right-of-Way shall be selected from a list approved by the City as species that are appropriate for planting within street Right-of-Way. Lists of currently approved and disapproved species are found in Table B-1, B-2 and B-3 of the Arboricultural and Open Space Manual. Additional species may be approved if they meet public safety and maintenance criteria appropriate for street trees, such as well-behaved root system (to minimize possible conflicts between roots and driveways, sidewalks and utilities), limb strength (to minimize falling branches), site lines (to not unduly obscure visibility for vehicular traffic) and robustness (to minimize the need for replacements). All trees for planting in the ROW shall include a standard one-year replacement warranty from the supplier.

2. All landscaping and related improvements in the Right-of- Way shall be installed and maintained substantially in the locations specified on Exhibit A; the City and J.U.L.I.E. will be contacted before planting to get accurate locations for underground utilities. Unless otherwise approved by the Public Works Director, such trees shall not be planted closer than four feet from the tree centerline to any underground utility, curb, sidewalk or driveway.
 3. It is agreed that the City shall have no legal or financial responsibilities to maintain or replace any trees or other landscape improvements planted or installed in the Right-of-Way pursuant to this Agreement.
- B. If the Work includes the installation and maintenance of private underground lawn irrigation improvements subject to the following requirements:
1. The Owner shall execute a Lawn Irrigation Agreement Addendum, which will be attached to this Agreement as Exhibit B.
 2. The design and installation of any underground lawn irrigation shall comply with all applicable City and State permit and code requirements including, but not limited to, backflow prevention requirements.
- C. The Owner shall maintain any and all Work, including any materials planted or placed in the ROW, pursuant to this Agreement according to acceptable industry standards, and as required by the City. This includes trimming of hazardous limbs and branches, removal of fallen branches, and removal of dead trees, if applicable.
- D. Owner agrees and acknowledges that the Agreement issued hereunder is revocable and grants the Owner the permission to perform certain work in right-of-way under the jurisdiction of the City and to thereafter maintain at the sufferance of the City any structures or facilities which are specifically authorized by this Agreement to be in, on, under or over the City's right-of-way. The Owner expressly acknowledges that the City has reserved the right to require the Owner or Owner's successors or assigns at Owner's sole expense, to remove any and all structures or facilities from the City's right-of-way. In the event that Owner fails to remove the structures and facilities upon request, the City may remove same and charge the Owner with any and all costs and expenses which the City has incurred or may incur in connection with such removal, relocation, repair, etc. Any costs which the Owner has incurred in connection with the purchase of any facilities or structure is Owner's sole and exclusive responsibility, and the Owner acknowledges that it has no right to just compensation or any other form of reimbursement or monetary damages should the City elect, at its sole and exclusive option, to require the removal of any structures or facilities from the City's right-of-way.
- E. The Owner represents all parties in interest and shall furnish materials, do all work,

pay all costs and shall in a reasonable length of time restore the damaged portions of the right-of-way to a condition similar or equal to that existing before the commencement of the described Work, including any seeding or sodding necessary.

- F. The Work shall be located and constructed to the satisfaction of the Public Works Director or their duly authorized representative. No revisions or additions shall be made to the proposed Work on the right-of-way without the written permission of the Public Works Director or their duly authorized representative.
- G. The Owner shall at all times conduct the Work in such a manner as to minimize the hazards to vehicular and pedestrian traffic. All signs, barricades, flaggers, etc., required for traffic control shall be furnished by the Owner and Owner shall comply with all federal, state and local regulations or requirements applicable to the Work.
- H. The Owner agrees to and shall indemnify and hold harmless the City of Warrenville, its officials, officers, employees, agents, volunteers, from and against any and all claims, actions, losses, damages, expenses, reasonable attorneys' fees, costs and expenses of litigation and investigation, for death, personal injury, property damage, claims arising out of the environmental laws or regulations, and any claim or action of any kind, arising out of or related to the Work authorized by this Agreement. This includes, by way of example and not by way of limitation, any and all claims for just compensation, property damage to any structure or facility authorized by this Agreement to be maintained in the City's right-of-way, or any claim of loss of use of the right-of-way by Owner.
- I. The Owner shall not trim, cut or in any way disturb any trees or shrubbery in or along the right-of-way without the approval of the Public Works Director or their duly authorized representative.
- J. The City reserves the right to cause the Owner to make such changes, additions, repairs, alterations, relocations or removals to or of the Work, in whole or in part, or any appurtenances thereto, located on the City's right-of-way, as from time to time may be considered necessary for any reason as determined by the City in its sole and exclusive discretion, for any such purposes as the City may determine, including, without limitation, to abate a nuisance, the health and safety of the public, any relocation, reconstruction, widening or maintaining of the roadway, the installation or maintenance of any public or franchise utility.
- K. The Owner, upon written request by the Public Works Director or their duly authorized representative, shall perform such changes, additions, repairs, alterations, relocations or removals to or of the Work, without expense to the City. Should the Owner fail to make satisfactory arrangements to comply with any such request by the City within a reasonable period of time, the City reserves the right to make such changes, additions, repairs, alterations, relocations, or removals as the

City, in its sole discretion, determines appropriate, and the Owner agrees to pay any and all costs incurred by the City in connection with same. The Owner waives all claims against the City regarding, the required changes, alterations, additions, repairs, relocations or removals to or of the Work installed in the City's right-of-way. Owner shall be responsible for the removal of any landscaping or related improvements installed in the right-of-way pursuant to this permit if any such improvements are determined by the City to be poorly maintained, decaying or dead. Should the Owner fail to remove said improvements within 30 days after notice from the City, the City may remove said improvements and the Owner shall pay all expenses incurred by the City to complete said removal.

- L. This Agreement is effective only as to the right-of-way under the jurisdiction of the City, and Owner shall secure any and all necessary authorizations or permits in order to comply with the provisions of any regulations of the State of Illinois, DuPage County, any other unit of local government, or any state or federal agency having any jurisdiction or authority over the structures or facilities or the right-of-way. Owner shall comply with each and every applicable statute or regulation relating to the construction or maintenance of any structures or facilities.
- M. Owner shall notify City prior to the start of any Work by means of five business day advance written notice personally served on Public Works Director.
- N. If the Owner and the Public Works Director cannot agree on whether the Agreement should be issued or on what conditions would be appropriate, in supplement to the standard conditions set forth herein, the Owner may, within 30 days of the issuance of written notice by the Public Works Director, appeal the Public Works Director's determination to the office of the City Administrator. The decision of the City Administrator shall be final.
- O. Other: This agreement is contingent upon Council approval of a variance to permit a parking space to encroach approximately 10' into the side street setback.

6. The conditions and restrictions of this Agreement shall run with the Property and shall be binding upon and inure to the benefit of the Owner of the Property, the Owner's successors, assigns and grantees, and all parties claiming by through and under them. Enforcement of the provisions of this Agreement may be sought by the City, by any proceeding at law or in equity against any person or persons violating or attempting to violate any provision of the Agreement, either to restrain violation, to compel affirmative action, or to recover damages and, in the event the City is the prevailing party, the City shall be entitled to recover its attorney's fees and costs. The foregoing enforcement remedy shall be in addition to any fines or penalties provided by law, including Section 7-2-2.M of the Warrenville City Code.

7. This Agreement will become a permanent record in the file maintained by the Property and shall be recorded, at the expense of the Owner, against the Property in the Office of the DuPage County Recorder of Deeds.

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8. 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 Agreement shall be given to:

City of Warrenville
3S258 Manning Avenue
Warrenville, IL 60555

Attention: Public Works Director

9. This Agreement shall be governed by the laws of the State of Illinois.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed by their duly authorized officials.

Email:

Address:

Owner Signature

Print Name _____

Email:

Address:

Owner Signature

Print Name _____

CITY OF WARRENVILLE

By: _____

Philip Kuchler
Public Works Director

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 _____(Owner), 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 (s)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 _____, 20 .

My Commission expires: _____

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

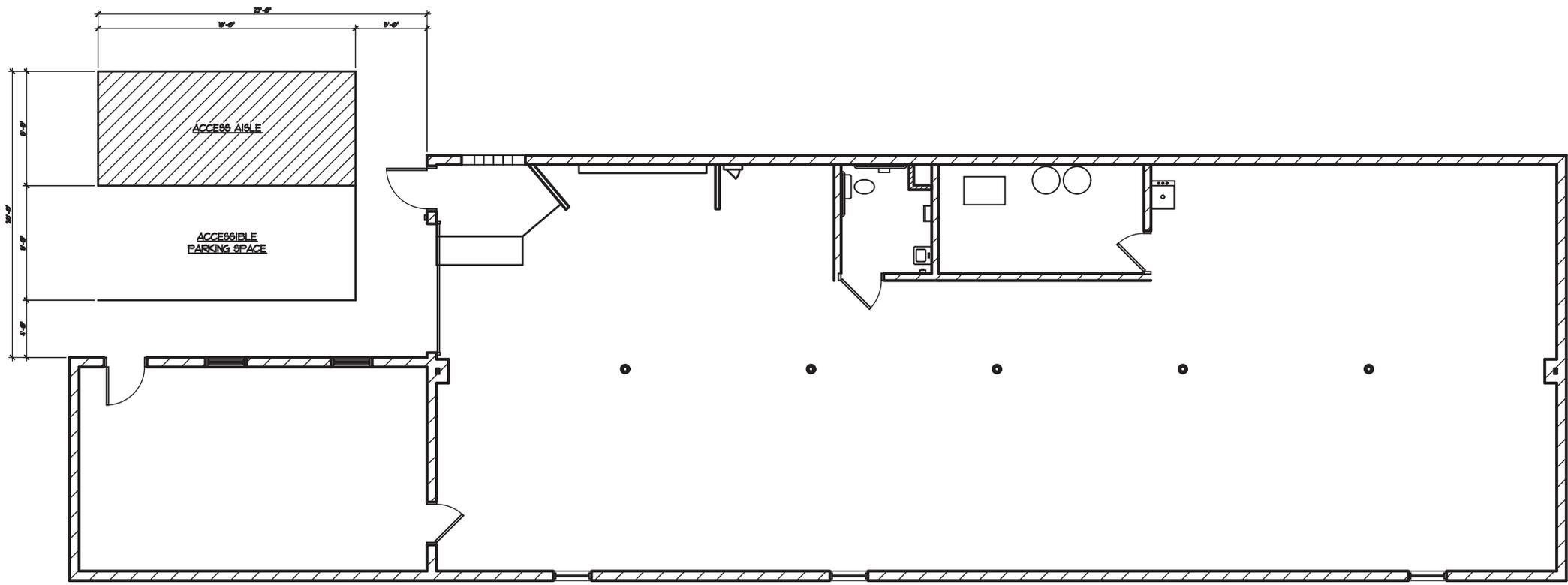
Given under my hand and official seal, this _____ day of _____, 20 .

My Commission expires: _____

Notary Public

Attachment to Form Agreement:

Exhibit A – Description / Depiction of the Work



FLOOR PLAN
NO SCALE

