

UNOFFICIAL COPY



Doc# 1721515169 Fee \$90.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 08/03/2017 02:22 PM PG: 1 OF 27

8980162
2 all

This Instrument was prepared by:
Marisa L. Byram
Lewis Rice LLC
600 Washington, Suite 2500
St. Louis, Missouri 63101

When recorded mail to:
David B. Lemkemeier
Lewis Rice LLC
600 Washington, Suite 2500
St. Louis, Missouri 63101

EASEMENT AND RESTRICTION AGREEMENT

THIS EASEMENT AND RESTRICTION AGREEMENT (this "Agreement") is made and entered into effective as of the 2nd day of August, 2017 (the "Effective Date"), by and among RJB-II Limited Partnership, an Illinois limited partnership and First American Self Storage Group, L.L.C., an Illinois limited liability company (collectively "First"), whose address is 1731 N. Marcey, Suite 200, Chicago, Illinois 60614, and Vanguard Des Plaines Apartments, L.P., a Delaware limited partnership ("Vanguard"), whose address is 135 North Meramec Avenue, Suite 500, St. Louis, Missouri 63105. First and Vanguard shall be referred to herein collectively as the "Parties" and individually as a "Party".

RECITALS:

A. First is the owner of that certain real property located in Des Plaines, Illinois, which property is more particularly described in Exhibit A attached hereto and made a part hereof (the "First Tract").

B. Vanguard purchased from First certain property located adjacent to the First Tract, which property is more particularly described in Exhibit B attached hereto and made a part hereof (the "Vanguard Tract") (collectively, the First Tract and the Vanguard Tract shall be referred to herein as the "Tracts" and individually as a "Tract").

27

UNOFFICIAL COPY

C. The Parties desire to memorialize certain development agreements and to grant certain easements for the benefit of the Tracts, as more particularly described and subject to the terms contained herein.

NOW, THEREFORE, the Parties hereby declare that from and after the Effective Date, the Tracts shall be perpetually held, sold and conveyed subject to the following easements, agreements, terms and conditions, all of which shall run with the ownership of the Tracts and be binding on all parties having any right, title or interest in the Tracts or any portion thereof, their respective tenants, occupants, successors and assigns, and shall inure to the benefit of each Tract. In consideration of the easements and the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Easement for Utilities.

a. Public Easements. The Parties have recorded or shall record in the real estate records of Cook County, Illinois, (i) a Plat of Covington Lexington Woods dedicating certain public easements on the Vanguard Tract, a copy of which plat shall be substantially in the form attached as Exhibit C hereto; and (ii) attached hereto as Exhibit D is a Plat of Easement granting certain public easements on the First Tract. Exhibits C and D are each subject to revision as may be required by the City of Des Plaines (the "City"), other public agencies, and utility providers.

b. Temporary Grading Easements. Each of the Parties hereby grants to the other Party a temporary grading easement on their respective Tracts as shown on Exhibit E and labeled thereon as "Temporary Grading Easement" for purposes of removal of existing improvements, grading, erosion control, stabilization, and temporary access serving the First Tract and the Vanguard Tract, respectively, in connection with such Party's development of its Tract, including reasonable access over the First Tract and the Vanguard Tract, respectively, thereto; provided, however, any disturbance or removal to or of any improvements on the other Party's Tract shall be promptly restored to substantially the same condition, and provided further, that in the event the other Party's Tract has been developed, then the Party using the grading easement shall use all commercially reasonable efforts to minimize disruption caused to the other Party's Tract. Each Party's temporary grading easement shall automatically terminate upon completion of the initial development on such Party's Tract.

c. Storm Water Easement. First hereby grants Vanguard a perpetual, appurtenant, non-exclusive easement in, under and across the First Tract as shown on Exhibit F and labeled thereon as "Storm Water Easement" for the installation, operation, maintenance, repair, replacement and removal from time to time of pipelines for the transmission of storm water and related facilities from the Vanguard Tract (the "Storm Water Easement"). In connection with its development of the Vanguard Tract, Vanguard shall, at Vanguard's sole cost and expense, install new storm water pipeline(s) and related facilities, designed according to the requirements of the City within the Storm Water Easement, and shall further, at Vanguard's sole cost and expense, maintain, repair, and replace such utility facilities to be located on the First Tract and installed pursuant to the Storm Water Easement and shall restore at its expense any part of the First Tract excavated or otherwise disturbed by Vanguard in connection with any such installation, maintenance, repair, removal, replacement or other work related to the Storm Water Easement to substantially the condition and state of repair approved by the City. First shall have the right at its sole cost and expense to connect to those utility facilities installed in the Storm Water Easement on the First Tract for the transmission of storm water from the First Tract provided such connection does not overload the capacity of such storm water pipelines and related facilities taking into account the use of such facilities by the Vanguard Tract, and First shall have a non-exclusive easement for such purpose at no cost or fee. In the event any such connection or use by First overloads the capacity of any such utility facilities (or, if First connects to such facilities before the development of the Vanguard Tract is

UNOFFICIAL COPY

completed, use of such facilities by the Vanguard Tract as fully developed is compromised), First shall immediately cause such facilities to be upgraded to accommodate use by both Tracts, which such upgrades shall be made in a good and workmanlike manner and in compliance with all applicable laws at First's sole cost and expense. In addition, in the event First connects the First Tract to the utility facilities installed within the Storm Water Easement, Vanguard shall continue to be responsible for the repair, maintenance and replacement of such facilities, subject to First's reimbursement to Vanguard of First's share of the costs thereof as follows: in the event of any reasonably necessary repair, maintenance, or replacement of any such utility facilities, both Parties shall share in the responsibilities for the costs of such maintenance, repair, removal or other work related to the facilities as more particularly provided below; provided, however, to the extent any repair, maintenance or replacement of any such line or facility is caused by the connection to such line or facility or use by only one Party or Tract, then such Party shall be responsible for all of the costs of such repair, maintenance or replacement at its sole cost and expense. Except as provided above, the cost of all maintenance, repair, replacement or other reasonably required work related to such facilities shall be prorated between the Parties in the same proportion that the acreage of each Party's Tract bears to the total acreage of both Tracts. First shall pay its proportional share of all such costs to Vanguard within twenty (20) days following its receipt of a detailed invoice therefor. The Parties agree that in the event the City (or other appropriate entity) is willing to accept a dedication of the lines and facilities located within the Storm Water Easement for maintenance, then upon the request of a Party, the Parties shall cause same to be dedicated to said City (or other appropriate entity) for such maintenance. In the event of such dedication, the parties shall have no further obligation to maintain such dedicated facilities. A temporary easement is hereby granted Vanguard as designated on Exhibit F for the purpose of installing utility facilities in the Storm Water Easement, including removal of existing improvements, grading, erosion control, stabilization, and temporary access.

d. Common Sanitary Sewer Facilities. Vanguard has agreed to construct certain sanitary sewer lines and necessary related facilities on the Vanguard Tract in those strips labeled "Sanitary Sewer Easement" as shown on Exhibit G attached hereto and made a part hereof (the "Shared Sewer Facilities") and connect such lines to the sanitary sewer lift station and main sanitary sewer line maintained by the City (or other governmental or other entity having jurisdiction or control thereover) (the "Public Sewer System"), and to install any required upgrades or improvements to such Public Sewer System in order to connect such lines thereto ("Upgrade Changes"), as well as a certain stub-out to connect the First Tract to such lines, which stub shall be located on the First Tract in the area shown on Exhibit G so that both Tracts may connect to the Public Sewer System. Notwithstanding the foregoing, in the event Vanguard has not commenced the Shared Sewer Facilities and First is prepared to develop the First Tract, and First has elected to install the Shared Sewer Facilities, First shall notify Vanguard of such election, in which event Vanguard shall advise First within ten (10) business days after receipt of such notice whether Vanguard intends to install the Shared Sewer Facilities within ninety (90) days from the date of receipt of such notice. In the event within ten (10) business days of Vanguard's receipt of such notice, Vanguard advises First that Vanguard intends to install the Shared Sewer Facilities within such ninety (90) days, then in such event, Vanguard shall proceed to install the Shared Sewer Facilities. In the event of any of the following: Vanguard so notifies First that it intends to install the Shared Sewer Facilities within such ninety (90) days, but fails to complete such installation within said ninety (90) days other than due to causes or events beyond Vanguard's reasonable control; Vanguard notifies First that it does not intend to install the Shared Sewer Facilities within said ninety (90) days; or Vanguard does not respond to First's notice within ten (10) business days of receipt thereof, in any such event, First may install the Shared Sewer Facilities, and upon receipt from First of copies of invoices therefor together with reasonable evidence of the costs shown there, Vanguard shall reimburse First for all of the reasonable costs and expenses incurred in conjunction with installation of the Shared Sewer Facilities. Once the Shared Sewer Facilities, including the stub-out, are constructed and all final approvals therefor have been obtained, First shall have the right to connect, in compliance with all applicable laws and upon prior notice to Vanguard,

UNOFFICIAL COPY

the sanitary sewer lines to be constructed on the First Tract to the stub-out for access to the Public Sewer System, and First shall have a non-exclusive easement to use the Shared Sewer Facilities for the transmission of sanitary sewage from the First Tract to the Public Sewer System at no cost or fee. First shall be responsible, at its sole cost and expense, for the installation, maintenance, repair, and replacement of all sanitary sewer lines and related facilities on the First Tract and all connections to the stub-out, including any tap in fees. Once constructed, Vanguard shall be responsible for the repair, maintenance and replacement of the Shared Sewer Facilities, subject to First's reimbursement to Vanguard of First's share of the costs thereof as follows: in the event of any reasonably necessary repair, maintenance, or replacement of any Shared Sewer Facilities, both Parties shall share in the responsibilities for the costs of such maintenance, repair, removal or other work related to the Shared Sewer Facilities as more particularly provided below; provided, however, to the extent any repair, maintenance or replacement of any such line or facility that is part of the Shared Sewer Facilities is caused by the connection to such lines or facilities or use by the First Tract, First shall be responsible for all of the costs of such repair, maintenance or replacement at its sole cost and expense. Except as provided above, the cost of all maintenance, repair, replacement or other reasonably required work related to the Shared Sewer Facilities shall be prorated between the Parties in the same proportion that the acreage of each Party's Tract bears to the total acreage of both Tracts. The cost of any Upgrade Changes shall be prorated between the parties in the proportion to which the Population Equivalent ("PE") allocated by the City to each respective Party's Tract bears to the total PE allocated by the City for both Tracts. Any PE allocated to both Tracts under the existing permit issued by the Metropolitan Water Reclamation District shall be divided equally between the two Tracts. First shall pay its proportional share of all such costs to Vanguard within twenty (20) days following its receipt of a detailed invoice therefor. Vanguard shall have the right, but not the obligation, to dedicate at any time the Shared Sewer Facilities, or any portion thereof, to the City (or other appropriate entity) and cause such entity to accept such facilities for all further maintenance. In the event of such public dedication, Vanguard shall have no further obligation to maintain such dedicated facilities. A temporary easement is hereby granted as designated on Exhibit G for the purpose of installing the Shared Sewer Facilities and related facilities, including the stub-out, including removal of existing improvements, grading, erosion control, stabilization, and temporary access.

e. East/West Water Easement. The Parties acknowledge and agree that a single water line for the benefit of both Tracts as approved by the City, shall be installed as shown on Exhibit H. The Parties will be responsible, in proportion to the acreage which each Party's Tract bears to the total acreage of both Tracts, for the operation, repair, maintenance, replacement and removal of such water line and related facilities located therein, unless and until the City or other governmental or appropriate entity having jurisdiction or control thereover agrees to accept a dedication of same for maintenance and repair, provided however the Party first initiating construction pursuant to this provision shall be solely responsible for all costs of installation, operation, repair, maintenance, replacement, and removal of such water line and related facilities until such time as the other Party's Tract is serviced by such water line. A temporary easement is hereby granted as designated on Exhibit H for the purpose of the installation of such water line, including removal of existing improvements, grading, erosion control, stabilization, and temporary access.

f. Obligation to Repair Damage. Notwithstanding anything herein to the contrary, each Party covenants and agrees, respectively, that its exercise of the easements and rights granted to it in this Agreement and the right to install, operate, repair, and maintain the respective facilities as contemplated in section (1) hereof shall not result in damage or injury to any structures or other improvements of the other Party. In the event any Party does cause any such damage or injury (or such injury or damage is caused by such Party's tenants, agents, contractors, employees or invitees or other persons for whom said party may be responsible), such Party shall promptly repair, replace or restore, at such Party's sole cost and expense, any and all damaged structures or other improvements.

UNOFFICIAL COPY

2. Access.

A. Golf Road Access.

(1) First hereby grants Vanguard and the tenants, permittees and invitees of the Vanguard Tract a perpetual, non-exclusive, appurtenant easement for unobstructed pedestrian and vehicular access to and from Golf Road across the First Tract in and over that portion of the First Tract shown on Exhibit I attached hereto and made a part hereof and labeled thereon as "Golf Road Access Easement" (the "Golf Road Access Easement"). The foregoing easement includes the right, but not the obligation, of Vanguard to construct, at Vanguard's sole cost, a paved driveway and related improvements for pedestrian and vehicular passage within such easement area (the "Golf Road Access Drive"), which construction shall be performed in a good and workmanlike manner, lien free and in compliance with applicable laws. In the event Vanguard constructs such drive, Vanguard shall be responsible for the repair and maintenance of such drive at its cost. First agrees to not obstruct or interfere in any way with the free flow of pedestrian and vehicular traffic over the Golf Road Access Drive, and no barriers, fences, walls, grade changes or other obstructions shall be created by First so as to interfere with such traffic. First shall not construct any improvements within the Golf Road Access Drive; provided, however, First shall have the right to access and use the Golf Road Access Drive, the location of which access point from the First Tract to the Golf Road Access Drive shall be subject to Vanguard's approval not to be unreasonably withheld. In the event the Golf Road Access Drive is utilized by occupants, permittees or invitees of the First Tract, then Vanguard shall continue to be responsible for the repair, maintenance and replacement of the Golf Road Access Drive, and First shall reimburse Vanguard for First's share of the costs thereof as follows: in the event of any reasonably necessary repair, maintenance, or replacement of the Golf Road Access Drive, both Parties shall share in the responsibilities for the costs of such maintenance, repair, replacement or other work related to the Golf Road Access Drive as more particularly provided below; provided, however, to the extent any repair, maintenance, replacement or other work related to the Golf Road Access Drive is caused by the use by only one Party or Tract, then such Party shall be responsible for all of the costs of such repair, maintenance, replacement or other work at its sole cost and expense. Except as provided above, the cost of all maintenance, repair, replacement or other reasonably required work related to the Golf Road Access Drive shall be prorated between the Parties in the same proportion that the acreage of each Party's Tract bears to the total acreage of both Tracts. First shall pay its proportional share of all such costs to Vanguard within twenty (20) days following its receipt of a detailed invoice therefor. A temporary easement is hereby granted Vanguard as designated on Exhibit I for the purpose of construction of the Golf Road Access Drive, including removal of existing improvements, grading, erosion control, stabilization, and temporary access.

(2) First shall have the right, at First's sole cost and expense, to relocate the Golf Road Access Easement and the Golf Road Access Drive to another location on the First Tract with Vanguard's prior written consent as to the new location and timing for its construction and opening, which consent shall not be unreasonably withheld. In the event of any such relocation, First shall provide Vanguard not less than fifteen (15) business days' notice prior to commencement of construction of such new drive. First shall not close, obstruct or interrupt the use of the existing Golf Road Access Drive until the relocated drive has been constructed, inspected and approved in compliance with applicable laws and is open to the public. Further, the relocated drive shall be constructed in at least as good, if not better, condition than the Golf Road Access Drive. In the event of any such relocation, First shall prepare an amendment to this Agreement depicting the new location of the Golf Road Access Easement, which amendment shall be subject to Vanguard's reasonable approval and shall be recorded in the real estate records of Cook County, Illinois.

UNOFFICIAL COPY

(3) In the event it is required by the Illinois Department of Transportation or the City, that the “Existing Golf Road Western Access” on the First Tract as shown on Exhibit I be modified, relocated, or removed, First shall promptly notify Vanguard of such requirement prior to beginning any such work, and Vanguard shall have the right to release its easement rights to such western Golf Road access on the First Tract. Unless Vanguard releases its right to such access, then the cost of such required work shall be equally shared by the Parties. Unless Vanguard releases its easement rights to such access, Vanguard shall have the right, but not the obligation, to perform the required work. Should this work be performed by Vanguard, First agrees to grant any required temporary easements to facilitate said modification, relocation or removal of such existing western Golf Road access on the First Tract.

(4) In the event it is required by the Illinois Department of Transportation or the City, that the “Existing Golf Road Eastern Access” on the First Tract as shown on Exhibit I be modified, relocated, or removed, the cost thereof shall be paid by First. Vanguard shall have the right, but not the obligation, to perform such work, Should this work be performed by Vanguard, First agrees to grant any required temporary easements to facilitate said modification, relocation or removal of such existing eastern Golf Road access on the First Tract.

B. River Road Access. Vanguard hereby agrees that First and the tenants, permittees, and invitees of the First Tract shall have a perpetual common non-exclusive, permanent easement, for unobstructed pedestrian and vehicular access to and from River Road across the Vanguard Tract at the location shown on Exhibit J and labeled “River Road Access Easement” therein (the “River Road Access Drive”), which access shall be constructed by Vanguard in connection with Vanguard’s development of the Vanguard Tract. Each Party agrees not to obstruct or interfere in any way with the free flow of pedestrian vehicular traffic over the River Road Access Drive, and no barriers, fences, walls, grade changes, or other obstruction shall be created so it interferes with such traffic, except to the extent necessary for reasonable repair and maintenance, traffic regulation and control, and/or to prevent a dedication thereof or the equivalent of any prescriptive rights to any person therein. Vanguard shall not construct any improvements within the River Road Access Drive inconsistent with use of such area for ingress and egress. In the event First connects the First Tract to the River Road Access Drive at the common line between the River Road Access Drive and the First Tract as shown on Exhibit C, then Vanguard shall continue to be responsible for the repair, maintenance and replacement of the River Road Access Drive, and First shall reimburse Vanguard for First’s share of the costs thereof as follows: in the event of any reasonably necessary repair, maintenance, replacement or other work related to the River Road Access Drive, both Parties shall share in the responsibilities for the costs of such maintenance, repair, replacement or other work, including but not limited to design and permitting thereof, as more particularly provided below; provided, however, to the extent any repair, maintenance, replacement or other work is caused by the connection to such drive or use by only one Party or Tract, then such Party shall be responsible for all of the costs of such repair, maintenance, replacement or other work at its sole cost and expense. Except as provided above, the cost of all maintenance, repair, replacement or other reasonably required work related to the River Road Access Drive shall be prorated between the Parties in the same proportion that the acreage of each Party’s Tract bears to the total acreage of both Tracts. First shall pay its proportional share of all such costs to Vanguard within twenty (20) days following its receipt of a detailed invoice therefor. Vanguard agrees to not object if First attempts to obtain approval of direct access to River Road from the First Tract, provided such access shall be at no cost to Vanguard and shall not alter the access to River Road from the Vanguard Tract. A temporary easement is hereby granted as designated on Exhibit J for the purpose of removal of existing improvements, grading, erosion control, stabilization, and temporary access.

C. Expiration of Temporary Easements. Each of the foregoing temporary easements granted under this Agreement shall expire upon the earlier of (i) twenty-four (24) months following the

UNOFFICIAL COPY

Effective Date; or (ii) completion of the respective installation and receipt of all related approvals which is the subject thereof.

3. **Multi-Use Path.** First and Vanguard each hereby dedicate to the City a non-exclusive, perpetual easement as shown on Exhibit K and labeled thereon as “Multi-Use Path” (the “Pathway Easement Area”) for use as a concrete pathway in the manner acceptable to and approved by the City. In the event the City or other governmental entity having jurisdiction over the Tracts requires or recommends that either Party, in connection with its development of either the First Tract or the Vanguard Tract, construct such concrete pathway on the Tract owned by the other Party, the Party responding to such requirement or request shall have the right, but not the obligation, to construct such concrete pathway and all related improvements on the Tract of the other Party in a manner acceptable to the City or such other governmental authority. After construction of such walkway on a Party’s Tract, such Party shall be responsible, at its sole cost and expense, for maintaining that part of the pathway located on its Tract as required by the City.

4. **Use Restriction on First Tract.** First hereby covenants and agrees that no market rate multi-family rental dwelling or apartment unit(s) shall be developed, constructed, or operated on the First Tract (“Use Restriction”). The foregoing Use Restriction shall automatically terminate if construction of a multi-family rental dwelling or apartment project is not commenced on the Vanguard Tract within two years after the date of this Agreement. The foregoing Use Restriction shall run with the land and shall be binding upon the First Tract and shall inure to the benefit of the Vanguard Tract. First acknowledges and agrees that such Use Restriction was a bargained for inducement at the time Vanguard purchased the Vanguard Tract, that fair consideration has been given by Vanguard for this restriction, and that the foregoing Use Restriction and the remedies set forth herein for breach of such Use Restriction are an integral aspect of this Agreement and are reasonable and necessary to protect the legitimate business interests of Vanguard. First acknowledges that it will be difficult to calculate the damage to Vanguard if First violates the foregoing Use Restriction. With respect to each and every breach or violation thereof, in addition to all other remedies available at law or in equity, Vanguard shall be entitled to enjoin the continuance thereof and may have any court of competent jurisdiction immediately issue a restraining order and other injunctive relief. Vanguard may pursue any remedy currently or consecutively in any order as to any such breach or violation, and the pursuit of any such remedy at any time will not be deemed an election of remedies or waiver of the right to pursue the other of such remedies.

5. **Insurance; Indemnity.** Each Party will at all times maintain or cause to be maintained with respect to its Tract commercial general liability insurance (including contractual liability coverage) against claims for bodily injury, death or property damage occurring on, in or about such Party’s Tract with minimum limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence and TWO MILLION DOLLARS (\$2,000,000) general aggregate. Each Party hereby indemnifies and holds harmless the other Party from any and all liability arising out of or occurring in connection with or as a result of the exercise of any of its rights permitted in this Agreement or the performance of (or failure to perform) any obligations required in this Agreement or as a result of any activity of such Party (or the activity of its tenants, employees, agents, contractors or invitees or other persons for whom said Party may be responsible) on the other Party’s Tract, including any and all liens, costs or expenses (including reasonable attorneys’ fees), except to the extent caused by the negligence or misconduct of the other Party or any of its tenants, employees, agents, contractors or invitees or other persons for whom said Party may be responsible.

6. **Default.** In the event any Party fails to fulfill any duty or obligation hereunder (a “Defaulting Party”), then prior to the other Party’s (the “Non-Defaulting Party”) enforcement of its remedies at law, in equity, or under this Agreement, the Non-Defaulting Party shall provide the

UNOFFICIAL COPY

Defaulting Party with written notice of such non-performance, and the Defaulting Party shall have a period of (i) ten (10) days as to monetary defaults and (ii) thirty (30) days (or such longer period as may be reasonably necessary to perform such cure not to exceed ninety (90) days), as to all other non-monetary defaults, in which to cure such non-performance. Following the expiration of such cure period, the Non-Defaulting Party shall have the right and license to take any steps reasonably necessary to cure such non-performance on the Defaulting Party's behalf, and to collect the costs of same from the Defaulting Party. Notwithstanding the foregoing, in the event of an emergency, a Party shall only be required to give the Defaulting Party such notice as is practicable under the circumstances, if any, before having the right to cure such non-performance and receive reimbursement therefor. The Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against the Defaulting Party, or any other person, violating or breaching or defaulting upon any of the provisions contained in this Agreement after expiration of the applicable notice and cure periods contained herein, and to recover damages for any such violation, breach or default. Such proceedings shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) may not be adequate. All remedies of the Parties are cumulative and shall be deemed additional to any and all other remedies to which the Parties may be entitled at law or in equity, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

7. **Lien Rights.** In addition to the remedies specified in this Agreement and those at law or in equity, costs, expenses and charges accruing, incurred, assessed and due pursuant to this Agreement shall constitute a lien against the Defaulting Party's Tract in favor of the Party to whom such costs, expenses or charges are due, plus accrued interest at the lesser of twelve percent (12%) per annum or the maximum rate permitted by law until paid. The lien shall attach and take effect only upon recordation of a claim of lien in the applicable real estate records office of the county and state in which said Tract is located, by the Party making the claim. The claim of lien shall include the following: (i) the name and address of the lien claimant; (ii) a statement concerning the basis for the claim of lien and identifying the lien claimant; (iii) an identification by name and address (if known) of the Party or reputed owner of the Tract or interest therein against which the lien is claimed; (iv) a description of the Tract against which the lien is claimed; (v) a description of the work performed or event which has given rise to the claim of lien; (vi) a statement itemizing the total amount due, including interest; and (vii) a statement that the lien is claimed pursuant to the provisions of this Agreement, reciting the date, book and page of recordation hereof. The notice shall be duly acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 13 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the liened Tract is located. Notwithstanding the foregoing, any Mortgage (as defined in Section 8(b) below) that is recorded against a Tract shall have priority over the lien for any costs, expenses or charges under this Agreement that are not delinquent on the date such Mortgage was recorded; provided, however, that a party acquiring title to a Tract (or portion thereof) shall be responsible for all such costs, expenses or charges becoming due and payable after such party acquires title.

8. **Ownership; Authority.**

(a) **Warranty of Title.** Each Party hereby covenants and warrants that, as of the Effective Date, it is the sole fee simple record owner of its Tract and that it has a good and lawful right to declare and establish the easements, restrictions and other matters affecting its Tract as set forth in this

UNOFFICIAL COPY

Agreement, free and clear of all liens and encumbrances, except as provided below. Each Party, and its successors and assigns, hereby warrants and shall defend the right and title to the easements described herein affecting its Tract unto the other Party, and its successors and assigns, against the lawful claims of all persons claiming by, through or under such Party.

(b) Subordination of Liens. Each Party hereby agrees that all mortgages, deeds of trust, deeds to secure debt and other similar encumbrances (each a "Mortgage", and the holder of such security interest, the "Mortgagee") hereafter recorded against such Party's Tract shall be subordinate and inferior to the easements, restrictions and other matters created by this Agreement, and to the extent that any Mortgage exists as of the Effective Date, such Party shall have all necessary parties execute a consent and subordination to this Agreement, in the form attached hereto as Exhibit L, which shall be recorded in conjunction herewith. As set forth in Section 7 above, the lien of any Mortgage shall have priority over any lien for any costs, expenses or charges under this Agreement that are not delinquent on the date such Mortgage was recorded; provided, however, that a party acquiring title to a Tract (or portion thereof) shall be responsible for all such costs, expenses or charges becoming due and payable after such party acquires title. Notwithstanding any other provision in this Agreement for notices of default, the Mortgagee of any Party in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement and any such Mortgagee shall have the right (but not the obligation) to cure such default within the time periods permitted herein.

(c) Authority. Each Party represents and warrants to the other Party that it has full power and authority to enter into and perform under this Agreement without the consent of any other person or entity (including, without limitation, any lenders or mortgagees, partners, lessees, ground lessors, or other superior interest holders or interested parties) other than those persons or entities which have expressly provided such consent herein below.

9. Nature of Easements. In the event a Party transfers or conveys a portion of its Tract, those easements granted hereunder which benefit, bind, and burden the remainder of the Tract not transferred or conveyed shall benefit, bind, and burden the portion of the Tract so transferred or conveyed, and those easements granted under this Agreement which benefit, bind, and burden the portion so transferred or conveyed shall benefit, bind, and burden the remainder of the Tract of which it was a part.

10. Restoration. In the case of any work performed by either Party on any portion of the Tract owned by the other Party, the Party performing such work, whether such work be installation, maintenance, repair or replacement, shall cause the portion of the Tract owned by the other Party to be reasonably restored to its condition as approved by the City.

11. Not a Public Dedication. Except as expressly provided herein, the easements and rights contained herein shall not be deemed to be a gift or dedication of any portion of the Tracts to the general public or for any public purpose whatsoever, it being the intention of the Parties that except as expressly provided herein, the easements created hereby be strictly limited to and for the purposes herein expressed.

12. Limitation of Liability. Any person acquiring title to a Tract shall be bound by this Agreement only during the period such person is holder of title to such Tract (or portion thereof); and, upon conveyance or transfer of such interest shall be released from liability hereunder, except as to the obligations, liabilities or responsibilities that accrue prior to such conveyance or transfer. Although parties may be released under this Section, the easements and covenants in this Agreement shall continue to be benefits to and servitudes upon the Tracts running with the land.

UNOFFICIAL COPY

13. **Severability.** In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

14. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon deposit in the United States Mail as Certified Mail, Return Receipt Requested, postage prepaid, or by overnight mail by a nationally-recognized courier, addressed to the Party being notified at the address set forth on the first page of this Agreement (or such other address which a Party may designate for itself from time to time hereafter by written notice to the other Party). The address for any Mortgagee shall be that specified in the recorded Mortgage, unless otherwise designated in writing to a Party.

15. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all such counterparts shall constitute one and the same instrument.

16. **Parties Bound.** The easements and all rights, obligations, and covenants set forth in this Agreement shall inure to the benefit of and shall be binding upon the respective heirs, successors, and assigns of the Parties and the tenants, permittees and invitees of the Tracts, if any, from time to time, it being the intention of the Parties that such easements and all rights, obligations, and covenants shall continue to be benefits to and servitudes upon the Tracts running with the land.

17. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

18. **Specific Performance and Attorneys' Fees.** In addition to all remedies available hereunder, at law or in equity, the rights and obligations of each of the Parties pursuant to the terms of this Agreement shall be enforceable by specific performance. In the event of litigation arising out of a Party's non-compliance with the provisions of this Agreement, the prevailing Party, as determined by the court, shall be entitled to, in addition to any other relief available hereunder, at law or in equity, reasonable attorneys' fees and court costs.

19. **Headings.** The paragraph headings in this Agreement are for convenience only and do not constitute a part of this Agreement and shall not be used to construe the Agreement.

20. **Amendments.** This Agreement may be amended or modified only by a written agreement executed by all of the Parties and recorded in the appropriate real estate records in which the Tracts are located.

21. **Waiver.** The failure of any Party in any one or more instances to insist upon compliance with any provision or covenant herein or to exercise any right or privilege hereunder shall not constitute or be construed as a waiver of such or any similar provision or covenant, but the same shall continue and remain in full force and effect, as if no such forbearance has occurred.

22. **No Merger.** The easements granted in this Agreement shall burden and benefit the Tracts notwithstanding the fact that any Party currently owns or may hereafter acquire common ownership of one or more Tracts, or any portions thereof. There shall be no merger as a result of any common ownership of the Tracts, or any portions thereof.

23. **Relationship of the Parties.** Nothing contained herein shall be construed or interpreted as creating a partnership, joint enterprise or joint venture between or among the Parties. It is understood

UNOFFICIAL COPY

that the relationship between the Parties is an arm's length one that shall at all times be and remain that of separate owners of real property. No Party shall have the right to act for or on behalf of another Party, as agent or otherwise, unless expressly authorized to do so by separate written instrument signed by the Party to be charged or bound, except as otherwise specifically provided herein.

24. No Termination for Breach. No breach, whether or not material, of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have hereunder by reason of any breach of the provisions of this Agreement.

25. Late Payments. Interest shall accrue on any payment required to be made by a Party under this Agreement that are more than ten (10) business days past due at the rate of 3% over the prime rate of interest as published in *The Wall Street Journal* at such time.

26. Waiver of Consequential Damages. IN NO EVENT SHALL ANY PARTY BE ENTITLED TO INDIRECT OR CONSEQUENTIAL DAMAGES, ALL OF WHICH ARE HEREBY WAIVED.

[remainder of page intentionally left blank; signatures follow on the next page]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute and deliver this Agreement as of the day and year first written above.

“FIRST”

RJB-II Limited Partnership,
an Illinois limited partnership

By: RJB-II Corporation,
An Illinois Corporation, General Partner

By: *[Signature]*
Ronald J. Benach, President

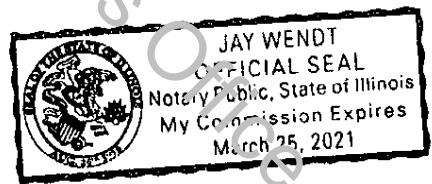
State of Illinois)
) ss.
County of Kane)

This instrument was acknowledged before me on 2nd day of August, 2017 by Ronald J. Benach as President of RJB-II Corporation, general partner of RJB-II Limited Partnership, an Illinois partnership.

(Seal)

[Signature]
Notary Public

My Commission Expires: 3/25/21




UNOFFICIAL COPY

“VANGUARD”

Vanguard Des Plaines Apartments, L.P.,
a Delaware limited partnership

By: Covington Vanguard Des Plaines, LLC,
a Delaware limited liability company,
its General Partner

By: Covington Developer LLC,
a Delaware limited liability company,
its Manager

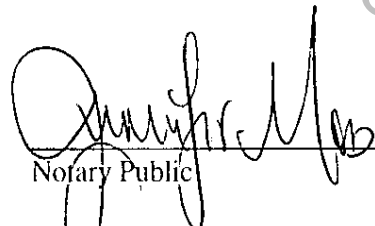
By: 
Name: Paul Langdon
Its: Vice President

State of Missouri)
) ss.
County of St. Louis)

This instrument was acknowledged before me on 31st day of July, 2017 by
Paul Langdon as Vice President of Covington Developer LLC,
manager of Covington Vanguard Des Plaines, LLC, general partner of Vanguard Des Plaines Apartments,
L.P., a Delaware limited partnership.

(Seal)

JENNIFER MOSS
Notary Public - Notary Seal
State of Missouri
Commissioned for Jefferson County
My Commission Expires: September 21, 2017
Commission Number: 13871682


Notary Public
My Commission Expires: 09/21/2017

UNOFFICIAL COPY

LIST OF EXHIBITS

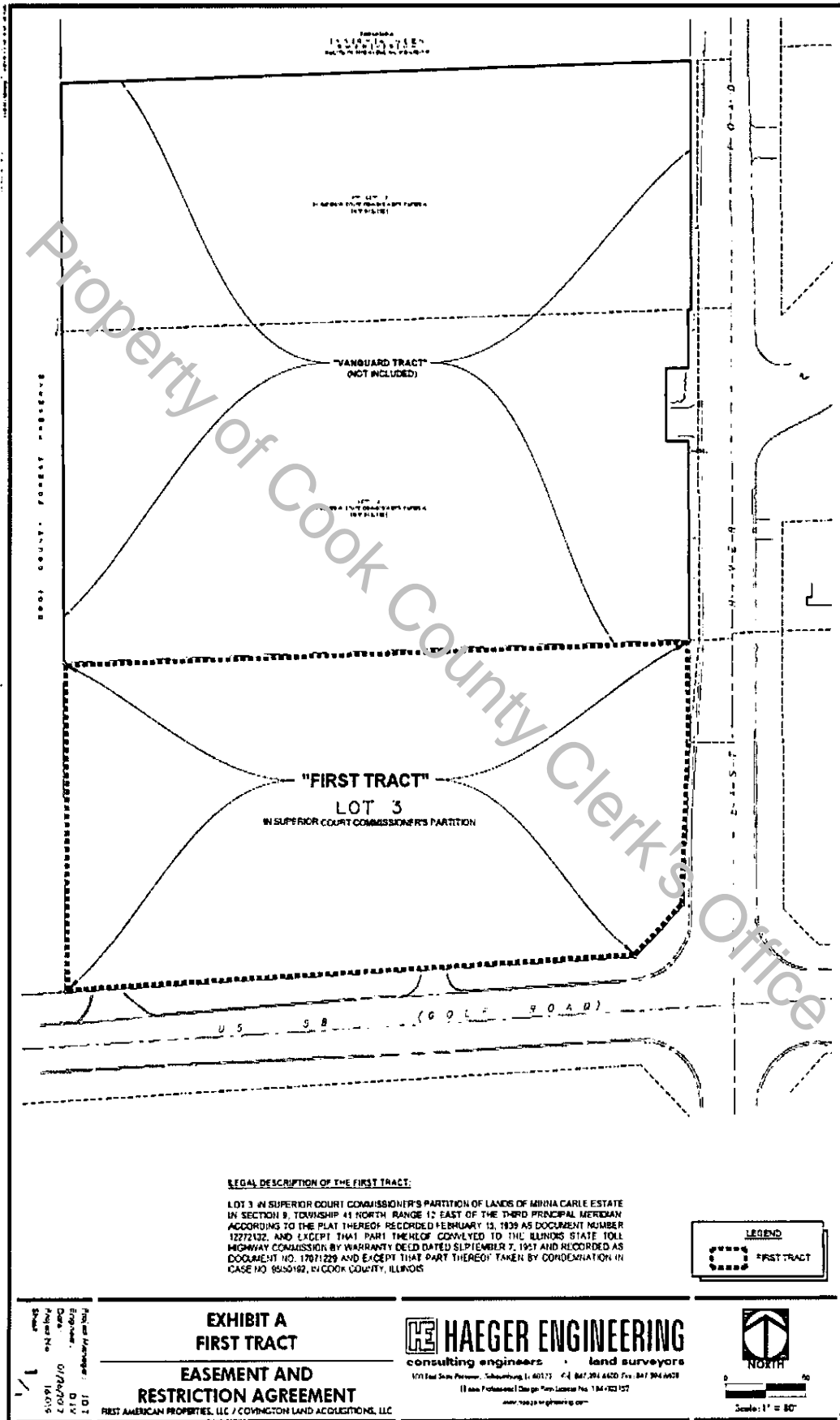
- Exhibit A Legal Description of First Tract
- Exhibit B Legal Description of Vanguard Tract
- Exhibit C Plat of Covington Lexington Woods
- Exhibit D Plat of Easement on First Tract
- Exhibit E Temporary Grading Easement
- Exhibit F Storm Water Easement
- Exhibit G Sanitary Sewer Easement
- Exhibit H Water Line Easement
- Exhibit I Golf Road Access
- Exhibit J River Road Access
- Exhibit K Public Multi-Use Path
- Exhibit L Form of Consent and Subordination to Easement and Restriction Agreement

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A

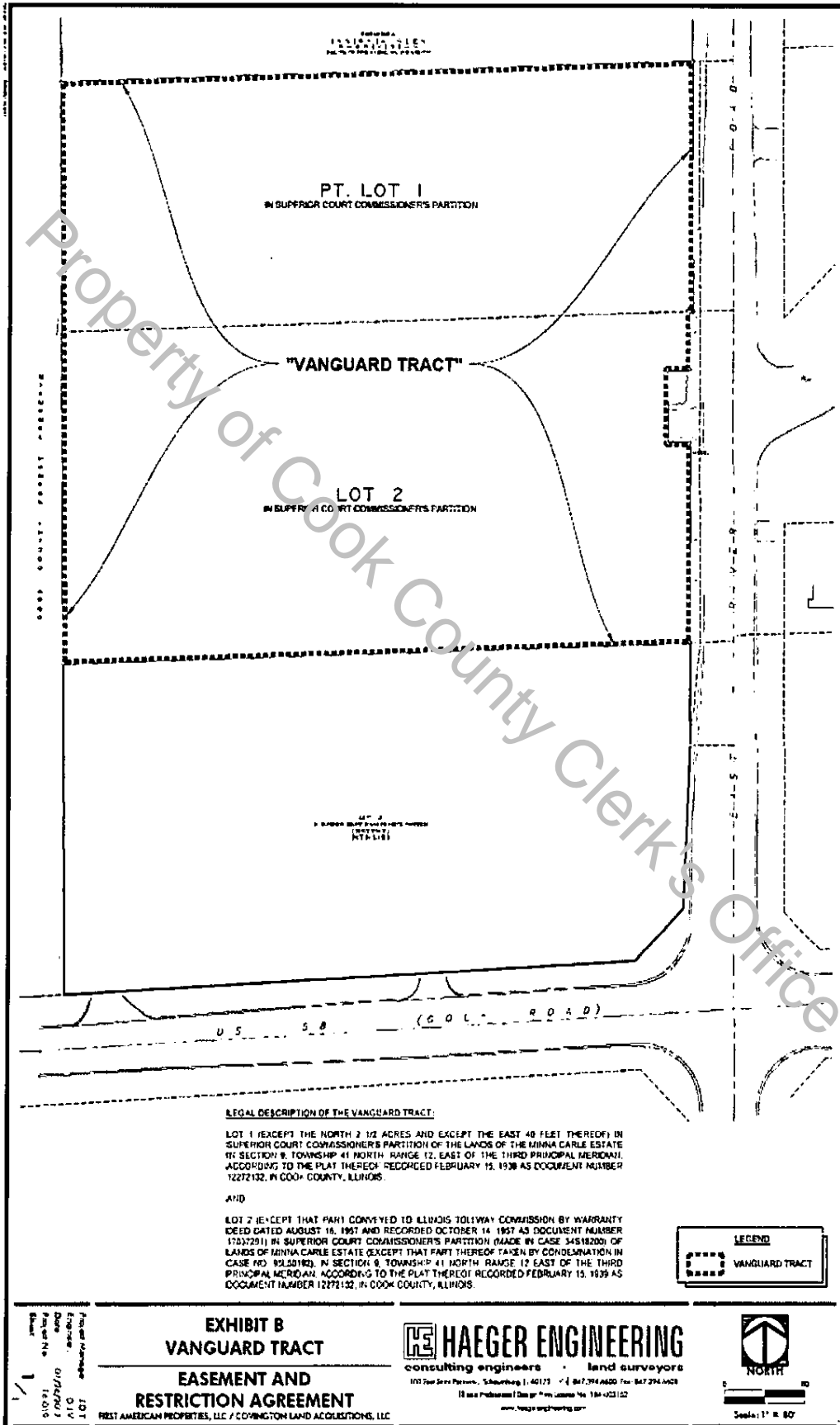
Legal Description of First Tract



UNOFFICIAL COPY

EXHIBIT B

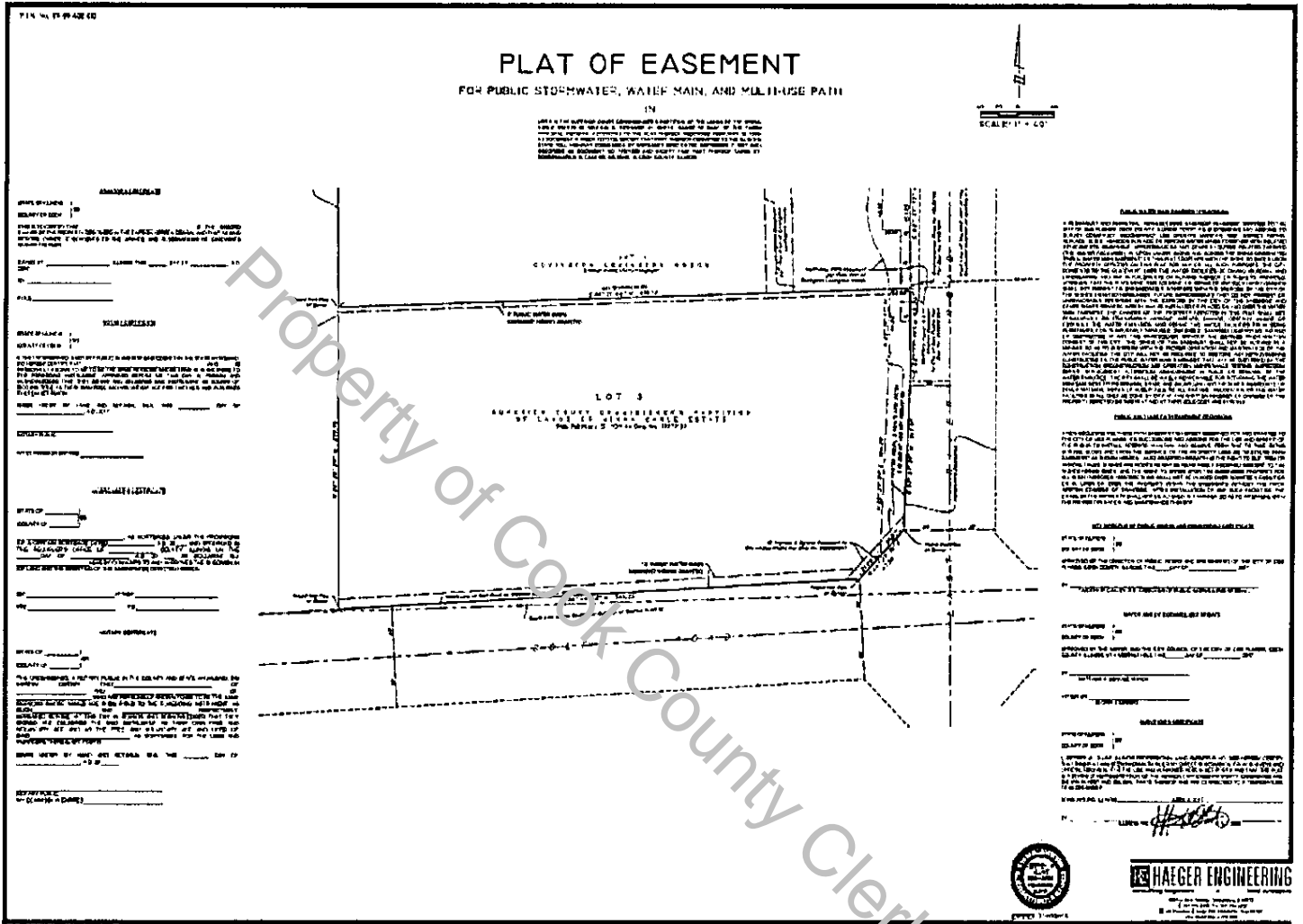
Legal Description of Vanguard Tract



UNOFFICIAL COPY

EXHIBIT D

Plat of Easement on First Tract

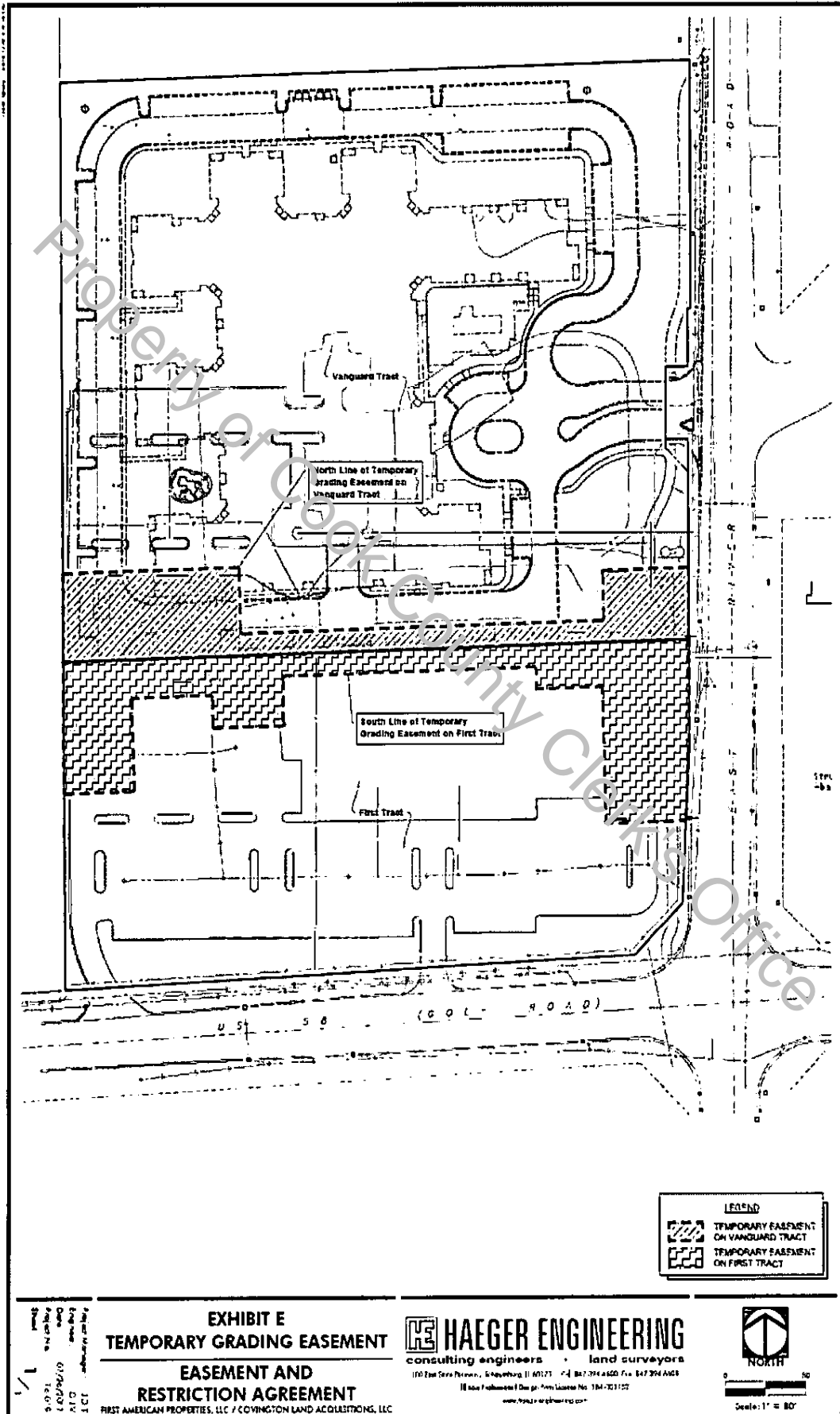


HAEGER ENGINEERING
Professional Engineer
No. 123456789
Chicago, Illinois

UNOFFICIAL COPY

EXHIBIT E

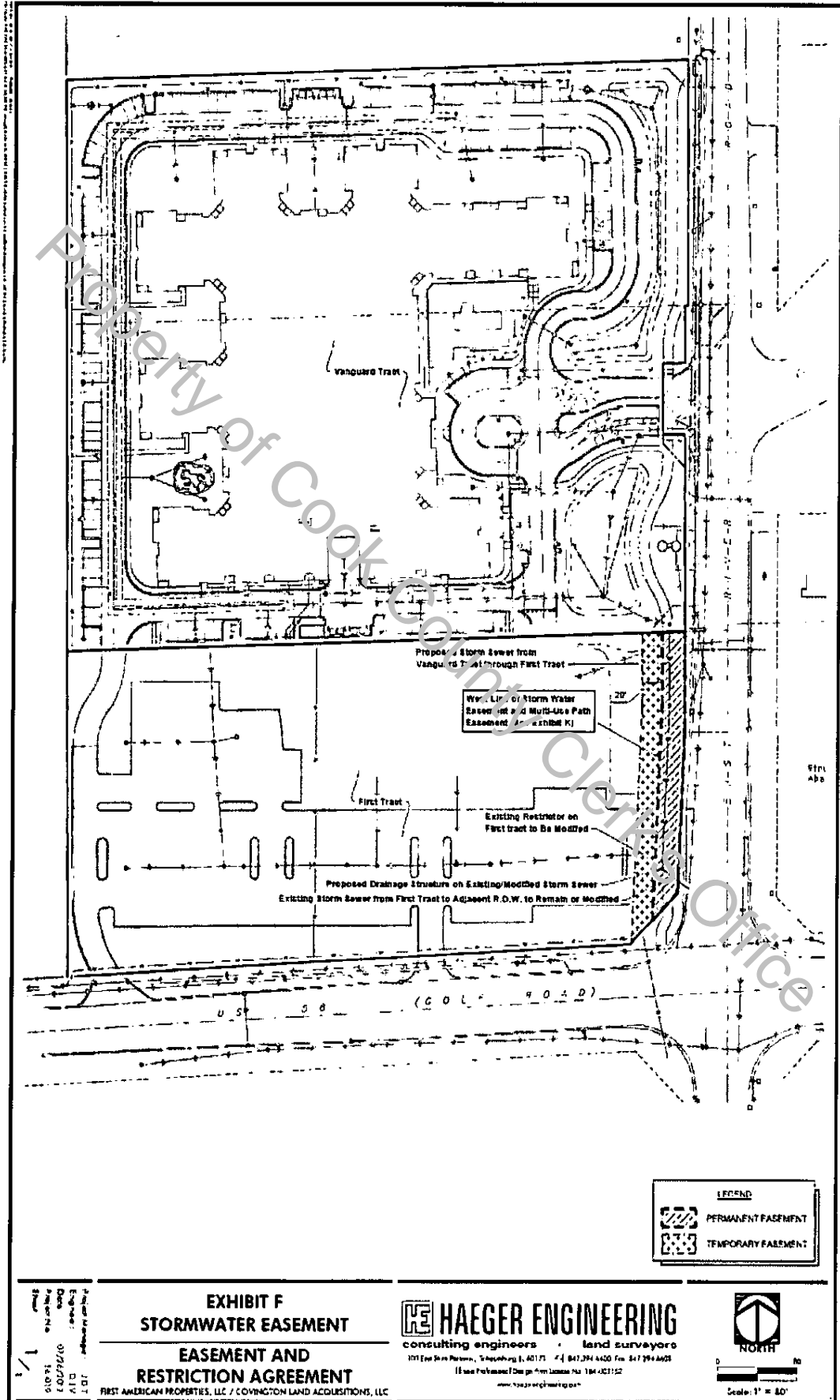
Temporary Grading Easement



UNOFFICIAL COPY

EXHIBIT F

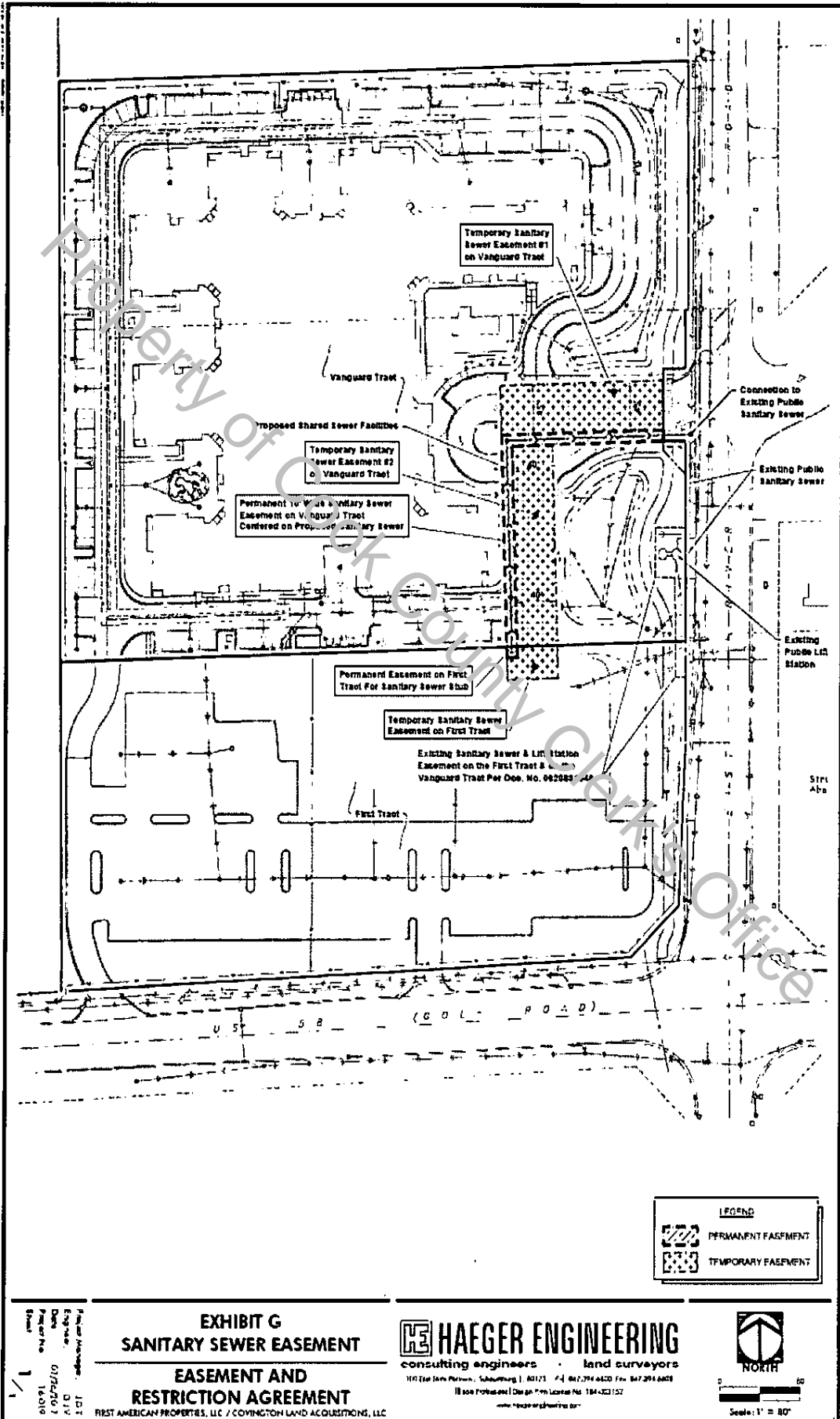
Storm Water Easement



UNOFFICIAL COPY

EXHIBIT G

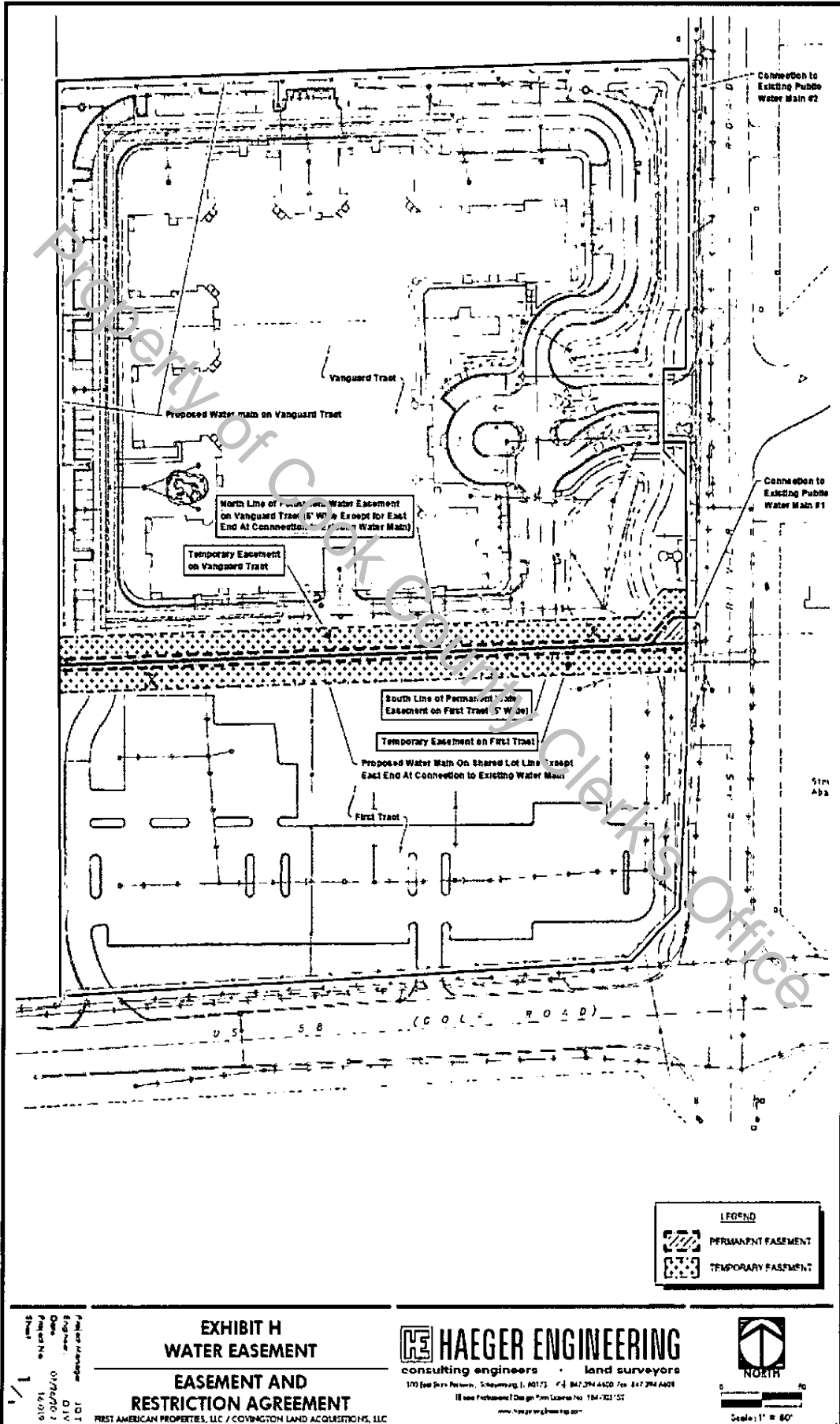
Sanitary Sewer Easement



UNOFFICIAL COPY

EXHIBIT H

Water Line Easement



Prepared by: JDT
 Checked by: DTV
 Date: 07/26/07
 Project No: 16215
 Sheet: 1/1

EXHIBIT H
WATER EASEMENT
EASEMENT AND
RESTRICTION AGREEMENT

FIRST AMERICAN PROPERTIES, LLC / COVINGTON LAND ACQUISITIONS, LLC


HAEGER ENGINEERING
 consulting engineers • land surveyors
 170 East Dixie Parkway, Savannah, GA 31411 • (404) 847-2944 FAX: 847-2944 A608
 If you're having trouble, call us at 1-847-2944 A608
 www.haegereng.com

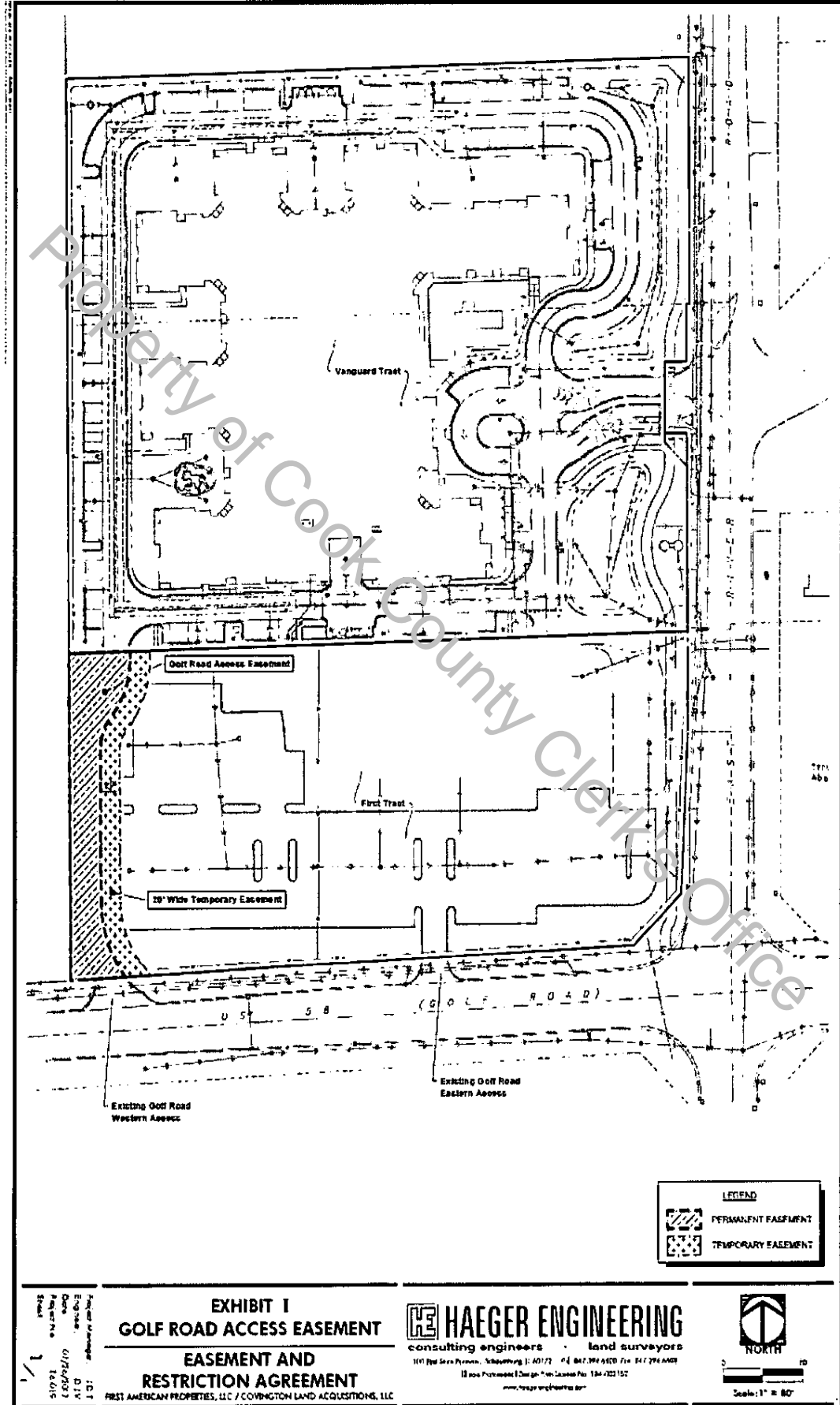


Scale: 1" = 80'

UNOFFICIAL COPY

EXHIBIT I

Golf Road Access



Registered Professional Engineer
 Date: 01/26/2023
 File No: 16-015
 Sheet: 1/1

EXHIBIT I
GOLF ROAD ACCESS EASEMENT
EASEMENT AND RESTRICTION AGREEMENT
 FIRST AMERICAN PROPERTIES, LLC / COVINGTON LAND ACQUISITIONS, LLC

HAEGER ENGINEERING
 consulting engineers • land surveyors
 101 Oak Grove Avenue, Schaumburg, IL 60197 • P: 847.394.6100 Fax: 847.394.6001
 Illinois Professional Land Surveyor License No. 134-022152
 www.haeger-engineers.com

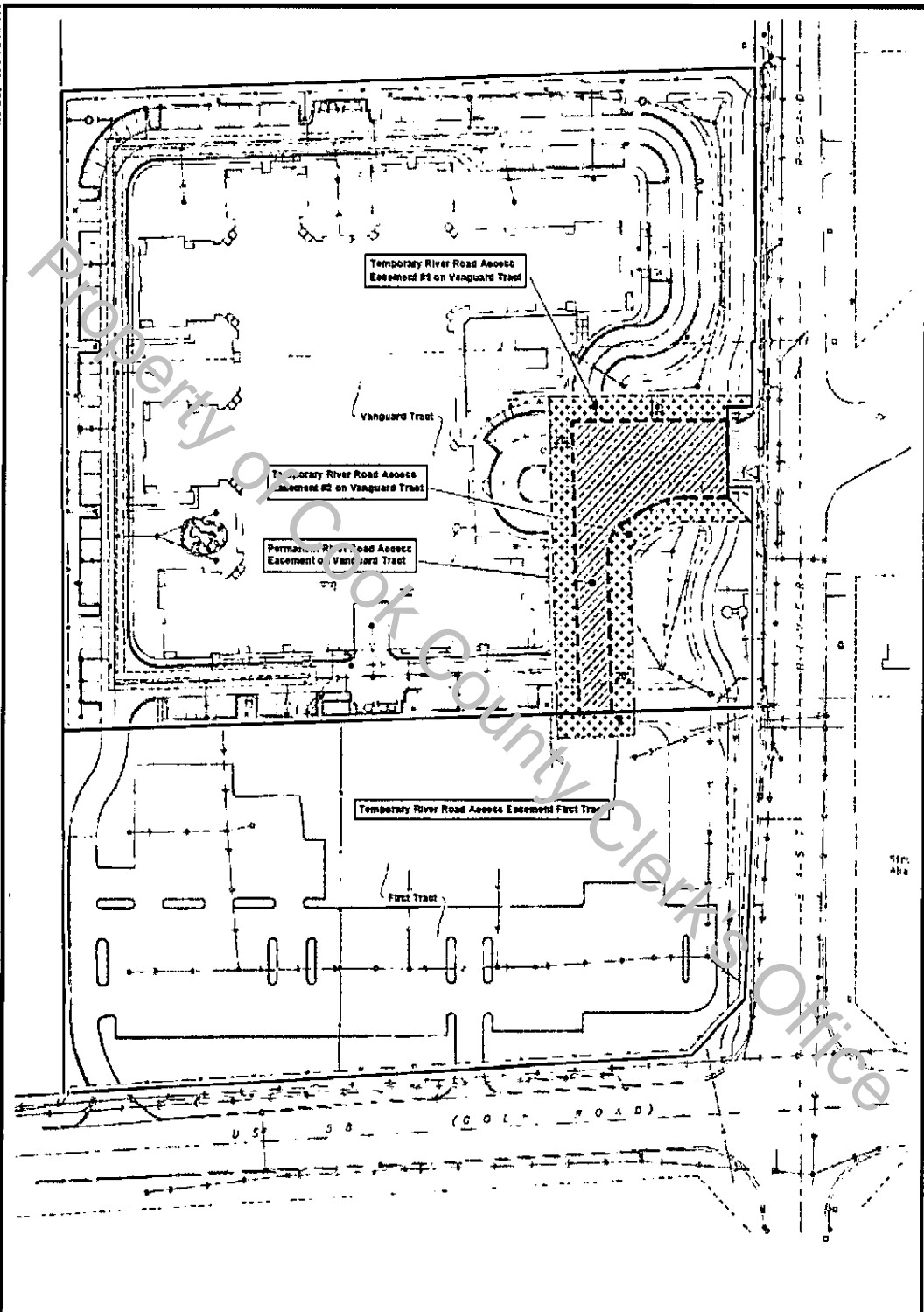
LEGEND
 PERMANENT EASEMENT
 TEMPORARY EASEMENT

NORTH
 Scale: 1" = 80'

UNOFFICIAL COPY

EXHIBIT J

River Road Access



LEGEND

PERMANENT EASEMENT

TEMPORARY EASEMENT

Project Manager
 Engineer
 Date
 Project No.
 Sheet

EXHIBIT J
RIVER ROAD ACCESS EASEMENT
EASEMENT AND
RESTRICTION AGREEMENT
 FIRST AMERICAN PROPERTIES, LLC / COVINGTON LAND ACQUISITIONS, LLC

HAEGER ENGINEERING
 consulting engineers • land surveyors
 101 East Main Parkway, Shreveport, LA 70115 • P 847.294.4100 F 847.294.4101
 IL See Professional Engineer's License No. 134-222152
 www.haeger-engineering.com

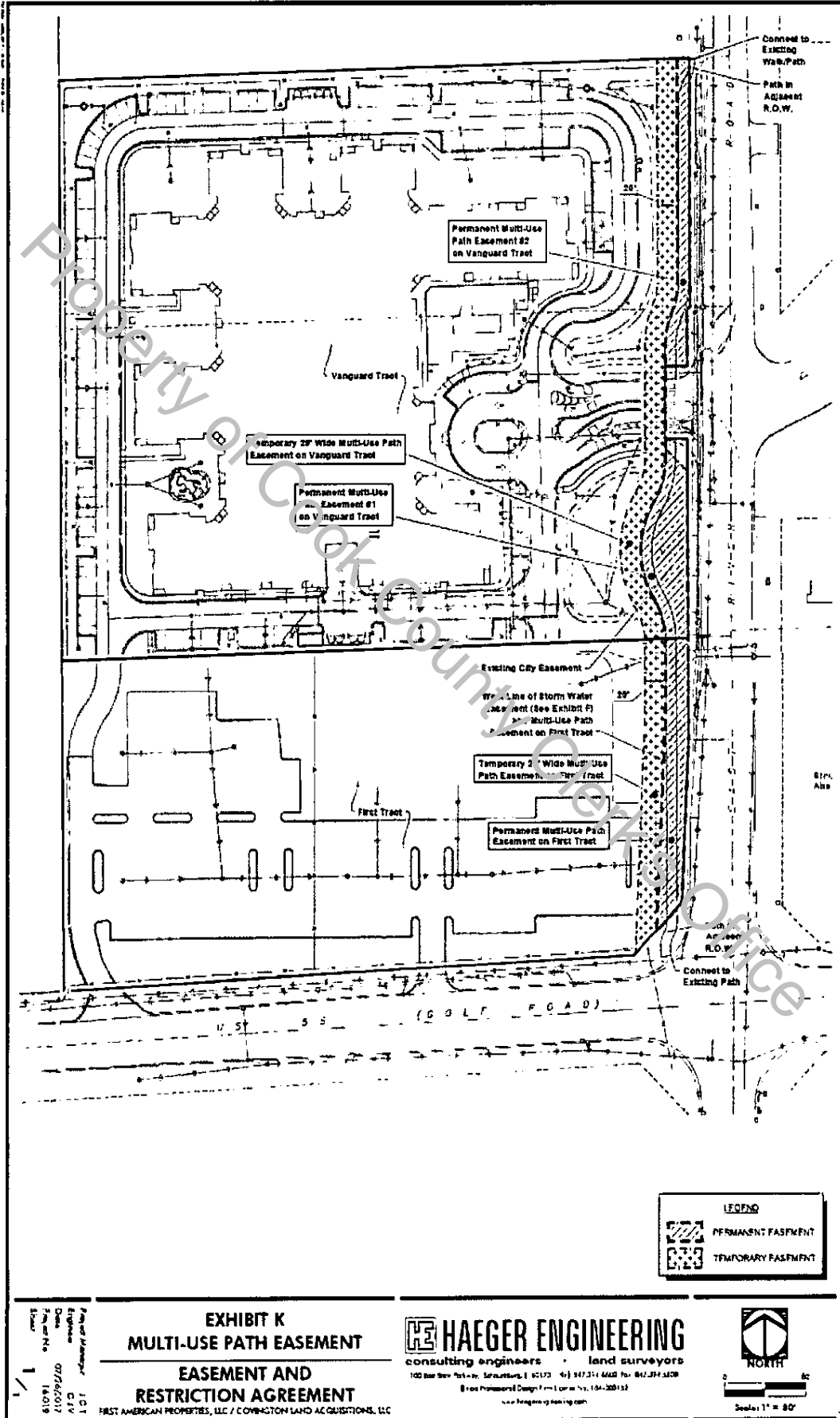
NORTH

 Scale: 1" = 80'

UNOFFICIAL COPY

EXHIBIT K

Public Multi-Use Path



**EXHIBIT K
MULTI-USE PATH EASEMENT**

**EASEMENT AND
RESTRICTION AGREEMENT**

FIRST AMERICAN PROPERTIES, LLC / COVINGTON LAND ACQUISITIONS, LLC

HAEGER ENGINEERING
 consulting engineers • land surveyors
 100 New River Park - W. Scrabbleton, LA 70173 • (504) 847-2314 • FAX: 847-234-3208
 E-mail: ProfessionalDesign@haeger.com • www.haeger-engineering.com



Scale: 1" = 80'

Project Manager: J.C.T.
 Designer: C.L.V.
 Date: 07/26/2017
 Plot No: 18-019

UNOFFICIAL COPY

EXHIBIT L

FORM OF CONSENT AND SUBORDINATION TO EASEMENT AND RESTRICTION AGREEMENT

_____ (“Lender”), owner and holder of certain obligations secured by that certain _____, dated _____ and filed for record on _____ in Book _____, page _____ in the land records in the office of _____ Cook County, Illinois (as amended, modified, supplemented or restated from time to time, the “Mortgage”), hereby consents to the terms and provisions of that certain Easement and Restriction Agreement to which this consent is attached (“Agreement”). Lender agrees that the lien, operation and effect of the Mortgage and the interest of Lender therein, are subject and subordinate, in all respects, to the terms and provisions contained in the Agreement, and that any subsequent foreclosure of the Mortgage shall not extinguish the Agreement. This Consent and Subordination is binding upon Lender and its successors and assigns.

LENDER:

_____, a

By: _____
 Name: _____
 Title: _____

[Appropriate notary acknowledgement to be added for recording]

Property of Cook County Clerk's Office