

UNOFFICIAL COPY

This instrument has been prepared by and should be returned after recording to:

City of Evanston
2100 Ridge Avenue, Room 4400
Chicago, IL 60201
Attn: Law Department



Doc# 2300622017 Fee \$88.00

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

KAREN A. YARBROUGH

COOK COUNTY CLERK

DATE: 01/06/2023 10:21 AM PG: 1 OF 13

This space reserved for Recorder's use only.

EASEMENT AGREEMENT

This Easement Agreement (this "**Agreement**") is entered into this 10th day of November, 2021, by and between the City of Evanston, an Illinois home rule municipal corporation (the "**City**"), The Varsity, LLC, an Illinois limited liability company ("**South Owner**"), and JR Varsity LLC, an Illinois limited liability company ("**North Owner**"). South Owner and North Owner are sometimes individually referred to as an "**Adjoining Owner**" and collectively referred to as "**Adjoining Owners**".

RECITALS

WHEREAS, South Owner owns certain property located at 1706-1710 Sherman Avenue, Evanston, Illinois, legally described in Exhibit A attached hereto (the "**South Property**"); and

WHEREAS, North Owner owns certain property located at 1712-1722 Sherman Avenue, Evanston, Illinois, legally described in Exhibit B attached hereto (the "**South Property**") (the South Property and North Property are each sometimes individually referred to as an "**Adjoining Property**" and collectively as the "**Adjoining Properties**"); and

WHEREAS, the City owns and has jurisdiction over a public right-of-way, an alley that extends between Sherman Avenue and Benson Avenue (the "**Alley**"); and

WHEREAS, part of the Alley is depicted and legally described in Exhibit C attached hereto (the "**Easement Premises**") as follows:

THAT PART OF THE 20 FOOT ALLEY LYING SOUTH OF LOT 6 AND NORTH OF LOTS 7 THROUGH 10 IN THE NORTHWESTERN UNIVERSITY RESUBDIVISION OF BLOCK 17 IN THE SOUTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS. AS SHOWN BY THE ANNEXED PLAT WHICH IS A CORRECT REPRESENTATION OF SAID SURVEY AND EASEMENT.

RECORDING FEE 88.00

DATE 1/06/2023 COPIES 6x

OK BY [Signature]

OR

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WHEREAS, the South Property lies south of and adjacent to the Easement Premises, and the North Property lies north of and adjacent to the Easement Premises; and

WHEREAS, the Adjoining Owners desire to have certain rights in the Easement Premises to improve the Easement Premises as a pedestrian space, appurtenant to the Adjoining Properties Property, for incorporating art, upgraded hardscaping and lighting, outdoor dining, seating and special events (collectively, "**Alley Improvements**"); and

WHEREAS, to construct, maintain and operate the Alley Improvements, the Adjoining Owners desire to receive certain easement rights from the City, and the City desires to grant such easement rights to the Adjoining Owners, in accordance with the terms of this Agreement and all applicable federal, state, and local laws, codes, rules and regulations (collectively, "**Legal Requirements**"); and

WHEREAS, the Alley, known as "Bookman's Alley", holds an important place in the culture and history of the City, and the parties are entering into this Agreement as a form of public-private partnership, to improve Bookman's Alley in a manner that pays homage to this history for the benefit of the local businesses and the community.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to enter into this Agreement on the following terms and conditions:

1. **Recitals.** The foregoing recitals are material to this Agreement and are incorporated herein as though fully set forth in this Section 1.

2. **Grant of Easements.** Subject to the terms and conditions contain herein, the City hereby grants and conveys the following easements in, over, upon, and across the Easement Premises (collectively, the "**Easements**") for the following uses and purposes, in favor of the South Property and the North Property:

(a) an exclusive easement to install, maintain, repair, and replace the hardscape surface of the Easement Premises, including base and sub-base layers, as necessary for pedestrians, accessible paths, and vehicular traffic, including the right to install decorative materials and traffic bollards or other detachable devices at each end of the Easement Premises to create a pedestrian-only, safe zone in the Easement Premises, subject to the rights reserved herein to the City to ensure access for utility repairs and emergency ingress and egress; and

(b) an exclusive easement to use, install, maintain, repair, and replace storefront entrances opening onto the Easement Premises from openings in the façade of the buildings now or hereafter adjoining the Easement Premises (the "**Adjoining Buildings**"); and

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(c) an exclusive easement to use, install, maintain, repair, and replace non-permanent awnings, pergolas, trellises, overhead and alley lighting, signage and art installations in the Easement Premises; and

(d) an exclusive easement for outdoor seating, dining, cafés, art fairs, concerts and similar uses sponsored by the Adjoining Owners or the tenants of the Adjoining Buildings, including the right to install non-permanent seating and ancillary items customarily used in outdoor dining venues in the City.

3. Provisions Concerning the Easements.

(a) "Owner" or "Owners" means the Person (or Persons if more than one) at any time in question whose estates, interests, individually or collectively, aggregate fee simple ownership of an Adjoining Property, jointly and individually, as the context requires. "Person" means a natural individual, corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property. The Easements shall inure to the benefit of and be appurtenant to the South Property and the North Property and the respective Owners thereof, and their successors, grantees, assigns and permittees. The Easements shall not merge by virtue of the common ownership of portions of Adjoining Properties by any Person. If any Adjoining Property shall be divided into more than one parcel, each separately owned parcel held in fee simple title shall be deemed an Adjoining Property and the term "Adjoining Owners" shall refer to the Owners that in the aggregate constitute the Owners of all Adjoining Properties.

(b) The Easements are for the exclusive benefit of the Adjoining Properties but subject to the concurrent use thereof by each Adjoining Property in the manner and subject to such limitations as the Adjoining Owners shall agree upon from time to time. To that end, the Adjoining Owners may execute and record a declaration of covenants (as amended from time to time, the "**Alley Declaration**") against the Adjoining Properties in the Cook County Recorder's Office, for the purposes of designating voting rights, cost sharing provisions and other terms of the Bookman's Alley Plan. Except as may be modified by the Alley Declaration, (x) the Adjoining Owners shall share in the costs of providing, maintaining, repairing and replacing the Alley Improvements in the ratio of their respective frontages (measured in lineal feet) along the Easement Premises and (y) decisions among Adjoining Owners shall be evidenced by a written consent signed by all Adjoining Owners (or by those Adjoining Owners holding voting rights on behalf of all Adjoining Owners). If and so long as any Adjoining Property is subject to the Illinois Condominium Property Act, the Adjoining Owner of such Adjoining Property shall mean all the unit owners in such Adjoining Property, provided that in such case, all actions taken or approvals given by such unit owners shall be given or taken by their condominium association board.

(c) If at any time the Adjoining Owners shall desire to provide improvements or uses within the Easement Premises that further the goals of creating a vibrant pedestrian space and supporting the goals of the City's comprehensive plan, they

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shall have the right to request such additional easements from the City, which may be adopted by amendment to this Agreement.

4. **Reserved Rights.** The City reserves the concurrent use of the Easement Premises and all rights appurtenant to the City's ownership thereof, including, without limitation, the right of ingress and egress to enter under, across and over the Easement Premises for any reason for inspections and for the City, from time to time, to install, operate, maintain, repair, replace, remove and relocate any of the facilities or equipment in, under or above the Easement Premises used in connection with the public water supply, sanitary sewer, storm drainage, or other public utilities and to allow any such entry by public utilities and cable companies in accordance with Legal Requirements and in such manner as the City shall deem proper so long as such use does not materially interfere with the enjoyment of the Easements for their intended purposes; provided, however, the City at all times shall enjoy the right of ingress and egress to enter under, across and over the Easement Premises for the City's fire, police and first responders in any emergency or situation involving imminent danger to any person or property.

The City shall use reasonable efforts to minimize disruption to the tenants and businesses operating within the Adjoining Buildings and to provide continued access thereto from the entrances located in the Easement Premises in connection with the City's exercise of its reserved rights, and when practicable, in the City's discretion, to perform such work during other than daytime business hours.

5. **Easement Conditions.** The grant of Easements in this Agreement shall be subject to the following conditions:

(a) At all times, each Adjoining Owner in the exercise of its easement rights shall comply with Legal Requirements. Without limiting the foregoing, no Adjoining Owner shall interfere with the stormwater catch basins or related appurtenances in the Easement Premises for collecting and channeling stormwater into the City's storm sewers.

(b) The Adjoining Owners, at their cost, shall maintain insurance in such amounts and with such coverages as shall be required by the City and shall name the City as an additional insured thereunder, in connection with the use and maintenance of the Easement Premises, comparable to the insurance from time to time required for permits to use park facilities or similar City-owned property. The amounts and type of insurance required shall be reasonably determined by the City, based upon the nature of the activity and the risk involved.

(c) The City shall not impose an easement fee or other charge for use of the Easement Premises authorized by this Agreement except as follows: at such time as the Adjoining Owners obtain a permit for constructing the Alley Improvements, the Adjoining Owners shall pay a one-time easement fee of \$72,881.74 ("**Easement Fee**"), but there shall be no other user charges or easement fees due from the Adjoining Owners in consideration

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of the grant of the Easements. The Adjoining Owners shall not expand the scope of the Easement Premises without written consent of the City.

(d) The City shall have no obligation to pay any of the costs of Alley Improvements installed adjacent or within the Easement Premises. All maintenance, repair, replacement activities for Alley Improvements are at the expense of the Adjoining Owners, except in the event of negligent damage caused by the City's exercise of its reserved rights, in which event the City shall be responsible for reimbursing the Adjoining Owners for the documented, out-of-pocket third-party costs of restoration following any such damage.

(e) The Adjoining Owners agree to perform or cause to be performed all necessary maintenance, repair and replacements to the surface of the Easement Premises and the Alley Improvements (to the extent within the rights granted herein to Grantee) to keep the same in good order and repair; however, if in the exercise of the City's rights, damage to the surface of the Easement Premises shall be necessary, then the City's sole obligation shall be to backfill any excavation and patch and repair the surface to normal standards for alleys but the Adjoining Owners shall bear the cost of any specialty or decorative materials.

(f) For purposes of the City's ordinances and regulation of alleys generally, the rules and regulations applicable to Alleys shall be modified in enforcement against the Adjoining Owners so as not to burden or preclude the use of the Easement Premises for the purposes set forth in this Agreement, to the extent reasonably necessary to facilitate use of the Alley Improvements contemplated herein.

6. **Indemnification**. Grantee will hold harmless, indemnify and defend the City, its lessees, franchisees, licensees, employees, agents, personal representatives, contractors, successors and assigns, against any and all claims, demands, loss, damage, liabilities, costs, expenses and all suits, liens, causes of actions and judgments (including, but not limited to reasonable attorney's fees) arising out of, or in any way related to, or in connection with, or as a result or consequence of the Easements and/or use of the Easement Premises or Grantee's acts or omissions under this Agreement, to the extent of Grantee's willful or negligent exercise of rights and privileges granted by this Agreement. Grantee's obligations in this section shall survive any termination or expiration of this Agreement.

7. **Release**. Grantee shall enter upon the Easement Premises and exercise its rights granted under this Agreement at its sole risk, cost and expense. Grantee hereby waives and relinquishes any and all claims, demands, loss, damage, liabilities, costs, expenses and all suits, liens, causes of actions and judgments related to the subject matter of this Agreement now or hereafter arising in Grantee or any of its employees', contractors' or agents' favor occasioned by, directly or indirectly, the conditions of the Subject Property and the Easement Premises or any improvements thereon or any other facts or occurrences with respect to Grantee's conduct under this Agreement, other than willful or negligent acts of the

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City. Grantee's obligations in this section shall survive any termination or expiration of this easement agreement.

8. **Notice.** All notices required to be given under this Agreement shall be in writing and shall be given by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, and addressed to the Person and addresses designated below.

If to Grantor: Director of Public Works
Evanston Civic Center
2100 Ridge Avenue
Evanston, IL 60201

with a copy to Law Department
Evanston Civic Center
2100 Ridge Avenue
Evanston, IL 60201

If to Grantee: The Varsity, LLC
1780 Ash Street, Suite 201
Northfield, IL 60093

The Person and address to which notices are to be given may be changed at any time by either party and by written notice to the other party. All notices given pursuant to the Agreement shall be deemed given upon receipt.

9. **Entire Agreement; Severability.** This document contains the entire agreement between the parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this Agreement shall be of no force and effect, and modifications to this Agreement shall be in writing and shall be signed by all parties to this agreement. Invalidation of any term or provision of this Agreement shall in no way affect any other term or provision hereof, which other terms and provisions shall remain in full force and effect.

10. **Run With Land.** This Agreement shall run with and bind the land for a term of twenty (20) years from the date this Agreement is recorded, after which time this Agreement shall be automatically extended for three successive periods of twenty (20) years and a fourth final period of nineteen (19) years (for a total of 99 years), unless an instrument amending this Agreement as hereinafter provided shall be recorded to provide for some other duration. If any other 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

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shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of any now living current or former President of the United States.

11. **Venue: Remedies.** The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance and any action brought to enforce the Agreement shall be brought in the Circuit Court of Cook County. In addition to any and all other remedies it may have, each party may enforce this Agreement by a suit for specific performance; the failure of a party to enforce this Agreement or any particular provision hereof at any given time shall in no event be deemed a waiver of the right to do so thereafter. Prior to initiating any enforcement action, the initiating party shall notify the responding party of any breach of this Agreement and reasonably specific details of the breach, and the responding party shall thereafter have sixty (60) days within which to cure such breach (unless such cure requires more than sixty (60) days, in which case responding party shall have such time as is reasonable to commence, diligently pursue, and complete such cure, but in no event more than one hundred twenty (120) days). Notwithstanding the foregoing, in the event a breach of this Agreement creates an emergency situation, then the breaching party shall be required to remedy the breach as soon as feasible and without delay. Notwithstanding anything contained herein to the contrary, no default by a party hereunder shall give any other party the right to terminate any of the easements or benefits granted under this Agreement.

12. **Recording.** This Agreement shall be recorded, at Grantee's expense, with the Cook County Recorder of Deeds notifying all future purchasers and other interested parties.

13. **Counterparts.** To facilitate execution of this Agreement, this Agreement may be executed in multiple counterparts, each of which, when assembled to include an original signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed original.


[Signature page follows]

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IN WITNESS THEREOF, this Agreement is made as of the date signed by the City.

CITY OF EVANSTON


THE VARSITY, LLC

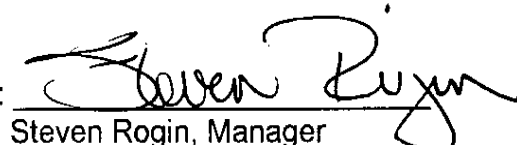
By: 
Kelley Gandurski, Interim City Manager

By: 
Steven Rogin, Manager

Date: 11/17/21

JR VARSITY, LLC

Approved as to form

Nicholas E. Cummings
Corporation Counsel

By: 
Steven Rogin, Manager

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

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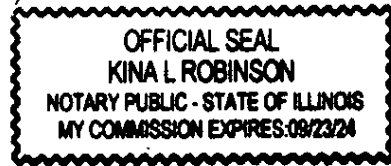
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, Kina L. Robinson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Helley Gauduski, personally known to me to be the City Manager of the City of Evanston, Illinois and the person who executed this agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the same instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 11th day of Nov., 2021.

Kina L. Robinson
Notary Public
(SEAL)

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS



I, ELLEN ROGIN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Steven Rogin, personally known to me to be the Manager of The Varsity, LLC, an Illinois limited liability company, and the person who executed this agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the same instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 4th day of November, 2021.

Ellen Rogin
Notary Public
(SEAL)

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS



I, ELLEN ROGIN, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Steven Rogin, personally known to me to be the Manager of JR Varsity, LLC, an Illinois limited liability company, and the person who executed this agreement, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the same instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 4th day of November, 2021.

Ellen Rogin
Notary Public
(SEAL)



DR

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EXHIBIT A

LEGAL DESCRIPTION SOUTH PROPERTY

THAT PART OF LOTS 7, 8, 9, 10, 11, 12 AND 13 IN THE RESUBDIVISION OF BLOCK 17 IN EVANSTON IN THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 7, THENCE RUNNING SOUTH ALONG THE EAST LINE OF SAID LOT 7, A DISTANCE OF 30.0 FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOT 7, A DISTANCE OF 35.0 FEET; THENCE SOUTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7, A DISTANCE OF 5.0 FEET; THENCE RUNNING WEST ALONG A LINE PARALLEL WITH THE NORTH LINE OF SAID LOTS 7 TO 11, BOTH INCLUSIVE, A DISTANCE OF 185.00 FEET; THENCE RUNNING NORTH ALONG A LINE PARALLEL WITH THE EAST LINE OF SAID LOT 7, A DISTANCE OF 85.0 FEET TO A POINT IN THE NORTH LINE OF SAID LOT 11, BEING 220.0 FEET FROM THE NORTH EAST CORNER OF SAID LOT 7; THENCE EAST ALONG THE NORTH LINE OF SAID LOTS 7 TO 11, BOTH INCLUSIVE, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

1706-1710 Sherman Avenue, Evanston, IL
11-18-126-014-0000

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EXHIBIT B

LEGAL DESCRIPTION NORTH PROPERTY

Lots 5 and 6 in the Northwestern University Resubdivision of Block 17 in the South East 1/4 of the North West 1/4 of Section 18, Township 41 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois

1712-1722 Sherman Avenue, Evanston, IL
11-18-126-021-0002

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office

SL

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EXHIBIT C

DEPICTION OF EASEMENT PREMISES

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

Property of Cook County Clerk's Office

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

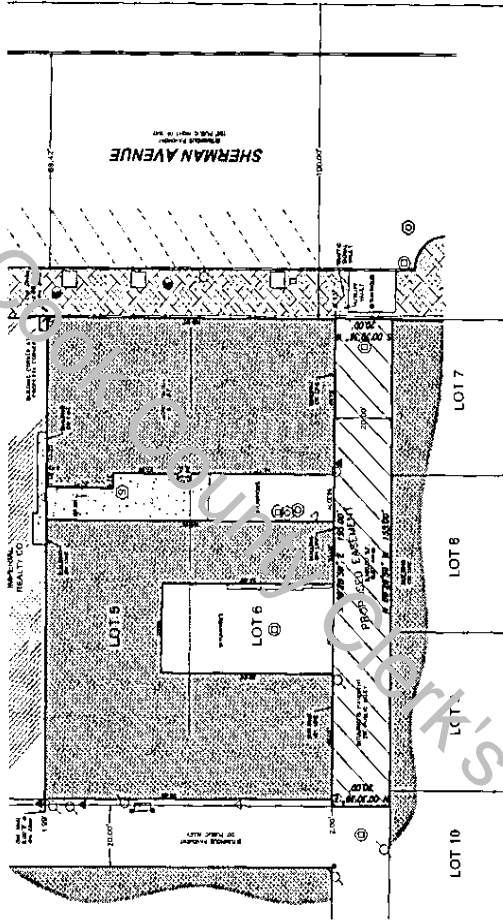
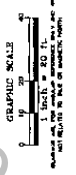
COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

COOK COUNTY CLERK OFFICE
RECORDING DIVISION
118 N. CLARK ST. ROOM 120
CHICAGO, IL 60602-1387

EASEMENT EXHIBIT

THAT PART OF THE SOUTH EAST 1/4 OF THE NORTH WEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.L.N.'s (has effect)
11-18-126-017-0000, 11-18-126-014-0000



EASEMENT LEGAL DESCRIPTION

THAT PART OF THE 20 FOOT ALLEY LYING SOUTH OF LOT 6 AND NORTH OF LOTS 7 THROUGH 9 IN THE NORTHWEST 1/4 CORNER SUBDIVISION OF BLOCK 1 IN THE 1/4 SECTION 18 OF THE NORTHWEST 1/4 OF SECTION 14 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT SOUTHWEST CORNER OF SAID LOT 6, THENCE SOUTHWESTERLY 200 FEET TO THE NORTHEAST CORNER OF SAID LOT 7, THENCE NORTHWESTERLY 7 ALONG THE NORTHEAST CORNER OF SAID LOT 7, THENCE NORTHWESTERLY 7 ALONG THE SOUTH LINE OF SAID LOT 7, THENCE SOUTHWESTERLY 7 ALONG THE SOUTH LINE OF SAID LOT 7, 155.00 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

SURVEYOR'S CERTIFICATE

STATE OF ILLINOIS,
COUNTY OF WELLS,

THIS IS TO CERTIFY THAT JAMES L. HARTPUG, ILLINOIS LAND SURVEYOR NO. 3180, HAVE SURVEYED THE FOLLOWING DESCRIBED PROPERTY:

THAT PART OF THE 20 FOOT ALLEY LYING SOUTH OF LOT 6 AND NORTH OF LOTS 7 THROUGH 9 IN THE NORTHWEST 1/4 CORNER SUBDIVISION OF BLOCK 1 IN THE 1/4 SECTION 18 OF THE NORTHWEST 1/4 OF SECTION 14 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

AS SHOWN BY THE MANAGED PLAN WHICH IS A CORRECT REPRESENTATION OF SAID PROPERTY AND EASEMENT. ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF.

GIVEN UNDER MY HAND AND SEAL AT BUCKLEWOOD, ILLINOIS, THIS ____ DAY OF _____, 2021.

JAMES L. HARTPUG
ILLINOIS PROFESSIONAL LAND SURVEYOR # 3180
LICENSE EXPIRES NOVEMBER 30, 2022

LEGEND
PROPOSED EASEMENT

Proposed Easement



JLH LAND SURVEYING INC.
910 Geneva Street, Bucklewood, Illinois 60004
815.729.0000 www.jlhsurvey.com



SURVEY PREPARED FOR
STEVE RICHMOND
780 A. H. STREET, UNIT 202
NORTHFIELD, IL 60063
PHONE: 847.967.1295

Table with 2 columns: Description, Area. Includes 'TOTAL AREA' and 'TOTAL AREA LESS EASEMENT'.

PLAN OF EASEMENT
172-172-172 SHERMAN AVENUE
EVANSTON, ILLINOIS

DATE: 11/18/21
SHEET: 1 OF 1
21-1000-100

FOR A COMPLETE LIST OF DRAWING STANDARDS, VISIT US AT WWW.AIAA.COM

Handwritten initials 'JLH' in the bottom right corner.