

6/18/2015

66-R-15

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute an Easement Agreement with The Barn Investment LLC

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the Easement Agreement with The Barn Investment LLC an Illinois limited liability company, attached hereto as Exhibit 1, the terms are incorporated herein by reference.

SECTION 2: The City Manager is hereby authorized and directed to negotiate any additional conditions of the Easement Agreement as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

SECTION 3: That this Resolution 66-R-15 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest


Rodney Greene, City Clerk

Adopted: July 13, 2015

EXHIBIT 1

Easement Agreement

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("**Easement Agreement**") is by and between THE CITY OF EVANSTON ("**Grantor**") and THE BARN INVESTMENT LLC, an Illinois limited liability Grantee ("**Grantee**") (each referred to herein as "**Party**" or, collectively, as "**the Parties**").

R E C I T A L S

A. Grantor is the owner of two properties that are the subject of this Easement Agreement. The first property is a section of City right-of-way in an alley south of Church Street, north of Davis Street, west of Oak Avenue (north/south leg); and the second property is the City Surface Parking Lot 27, which is metered and located east of Oak Avenue, west of Maple Avenue (collectively referred to as the "**City Property**").

B. Grantee will be operating a restaurant in a building that is adjacent to the City Property ("**Project**"). The restaurant will be located in an independent structure behind 1012 Church Street and Grantee will be leasing the building for that purpose (the "**Building**"). In order to provide access to the Building for Grantee's future patrons, employees, contractors and agents, Grantee requests an easement over the City Property.

C. Grantee has requested that the City grant three easements total; two easements to provide Grantee access to the Building over the City Property which is identified in Exhibit 1 ("**Access Easement Area**") and legally described on Exhibit 1. The third easement is for Grantee to install private water service under and tie into the City's water main located under Oak Avenue. The private water service will run from the parkway on Oak Avenue to the Building. The City owns and maintains the water service from the water main to the parkway. The City has agreed to grant the referenced Easements, subject to the terms and conditions of this Easement Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated in and made a part of this Easement Agreement as if fully set forth below, the mutual agreement of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Access Easements. Grantor provides Grantee a twenty (20) year easement over the easement area depicted in the Plat of Easement and total size of the easement area is 800 square feet, attached as **Exhibit 1** for the limited purpose of providing access to the Building over City Property (collectively "**Access Easement Area**"). The Access Easement Area legal description is provided in **Exhibit 1**. Grantor hereby grants to Grantee, its agents, servants, employees, its successors and assigns, a non-exclusive easement over the Access Easement Area to provide Grantee an entry point and clear accessibility to the Building. This grant shall constitute a covenant,

which runs with the land, and shall be binding upon the legal representatives, successors and assigns of Grantor.

Grantee shall, at its sole cost and expense, install bollards on the north side and south side of the Access Easement Area to signal all vehicles that the alley is not available for vehicular use beyond the bollards. The Parties will coordinate on the number, height, and location of the bollards prior to Grantee's installation. Grantee is responsible for removing debris and rubbish from the Easement Area.

2. Water Service Easement. Grantor provides Grantee a twenty (20) year easement for continued use of the subsurface property, within the Parking Lot area, all within the City of Evanston, as described in Exhibit 1 and depicted in the Plat of Easement. The easement will be for Grantee to tie into the City's water main and provide water service to the Building ("**Water Service Easement**"). The Grantee will supply construction drawings for the water service line and the water service will be within the Water Service Easement area. The tie-in locations for the water service shall be strictly adhered to after the parties have agreed on construction drawings and only may be amended if Grantee receives written consent from the City of Evanston Water Division. Grantor hereby grants, conveys, warrants and dedicates to the Grantee, its agents, servants, employees, its successors and assigns, a non-exclusive utilities easement to survey, construct, reconstruct, use, operate, maintain, test inspect, repair, replace, alter or remove the water service line, in, over, upon, along, across and under the Parking Lot together with related attachments, equipment and appurtenances thereto.

Grantor shall retain all rights to use and occupy the Parking Lot and access to Grantor's remaining property, except as herein expressly granted; provided, however, Grantor's use and occupation of the Water Service Easement area may not interfere with Grantee's use of the area for the purposes herein described. Grantor will provide Grantee notice of any construction work in the Water Service Easement area.

3. Water Service Easement Construction.

a. The construction and installation of the private water service line under City Property shall be in accordance with plans and specifications therefore prepared at Grantee's expense and supplied to the City by the Grantee. No work shall commence until said plans and specifications have been approved in writing by the City Engineer and Water Division.

b. Grantee shall complete construction of the Facilities and Improvements and shall restore the surface of Easement Premises to the condition which existed prior to such construction (collectively the "**Water Service Installation**") within six (6) months of the Effective Date of this Agreement, then the City will send a written notice (the "**First Notice**"), subject to Force Majeure (as defined below). In the event Grantee has not completed the Total Fiber Work by the end of such six (6) month period, City shall be permitted to send a written notice (the "**Second Notice**") to Grantee stating that Grantee must complete such Water Service Installation within forty-five (45) days of receipt of the Second Notice. If Grantee has not completed the Water Service

Installation within such forty-five (45) day period, Grantor, upon written demand to Grantee, shall be permitted to collect a per diem fee from Grantee in the amount \$150.00 for each day beyond such forty-five (45) period that Grantee has not completed the Water Service Installation. As used herein, the term "Force Majeure" shall mean labor disputes, acts of God, moratoriums, war, riots, insurrections, civil commotion, a general inability to obtain labor or materials or reasonable substitutes for either, fire, unusual delay in transportation, severe and adverse weather conditions preventing performance of the Water Service Installation, unavoidable casualties, unforeseeable acts or failures to act by any governmental entity, quasi-governmental entity and/or utility Grantee or their respective agents or employees (including but not limited to the failure to install utility improvements), unforeseeable governmental, quasi-governmental or utility Grantee restrictions, regulations or controls including the inability to obtain the necessary approvals necessary to complete, among other things, the Water Service Installation and delays caused by the breach of this Easement Agreement or default under this Easement Agreement by City.

c. Grantee shall construct, install, operate, maintain, and remove the Improvements and Facilities in a good and workmanlike manner at its sole cost, risk, and expense. The Grantee shall be solely responsible for providing maintenance support for the private water line. The Grantee shall be solely responsible for any cost and expenditure associated in anyway with the private water line during the duration of this Easement Agreement.

d. If Grantee shall relocate or remove any utility poles within the easement area, it shall be at no cost to the City: In the event that said relocation or removal is required for the corporate purposes of the City. The Grantee agrees to protect all existing City facilities within the City Property and Water Service Easement Area, including, but not limited to, water system and appurtenances, sewer system and appurtenances, street light and traffic signal systems and appurtenances and fiber optic system and appurtenances.

4. Easement Fee. The Grantee covenants and agrees in consideration of the grant of said easements to pay the City an easement fee in the amount of \$400 per year/\$8,000 total easement fee for the Term, the first year fee is payable contemporaneously with Grantee's execution and delivery hereof and on August 1st of every year thereafter. At the end of said easement term, the Parties shall revisit the easement fee and negotiate any additional necessary conditions in order to renew the easement agreement.

5. Easement Term. The Easement Term is for twenty (20) years and can be renewable upon the written consent of the Parties and the payment of a renewal easement fee to be calculated at a later date and any other conditions imposed by the Grantor to renew the Easement.

6. Environmental. Grantee shall comply with all Environmental Laws (hereinafter defined) and shall not cause or permit any Hazardous Substances (hereinafter defined) to be brought, kept or stored on the Property, and shall not engage

in or permit any other person or entity to engage in any activity, operation or business on the Alley Easement Area that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances. In the event that any work performed by or on behalf of Grantee on or to the Alley Easement Area exposes, uncovers or results in the presence of Hazardous Substances on the Alley Easement Area (including presence in soils excavated in conjunction with the Project), Grantee, at its sole cost and expense, shall be responsible for the remediation of such Hazardous Substances in accordance with Environmental Laws, except to the extent caused by City.

“Hazardous Substances” means all hazardous or toxic materials, substances, pollutants, contaminants, or wastes currently identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**“CERCLA”**), as amended, the Superfund Amendments and Reauthorization Act (**“SARA”**), the Resource Conservation and Recovery Act (**“RCRA”**), or any other federal, state or local legislation or ordinances applicable to the Property. As used in this Easement Agreement, **“Environmental Laws”** means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any governmental authority and in effect on or after the date of this Easement Agreement with respect to or that otherwise pertain to or affect the Property, or any portion of the Property, the use, ownership, occupancy or operation of the Property, or any portion of the Property, or any owner of the Property, and as same have been amended, modified, or supplemented from time to time, including but not limited to CERCLA, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), RCRA, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), SARA, comparable state and local laws, and any and all rules and regulations that are effective as of the date of this Easement Agreement, or become effective after the date of this Easement Agreement under any and all of the aforementioned laws.

7. Covenants and Conditions. Grantee covenants, warrants and agrees that with respect to the activities contemplated under this Easement Agreement that: (i) no waste or damage shall be committed upon or to the Easement Area; (ii) the Easement Area shall be used for only the purposes set forth herein; (iii) the Easement Area shall not be used for any unlawful purpose and no violations of Laws (hereinafter defined) or duly constituted authority shall be committed thereon; (iv) Grantee shall keep the Easement Area in a clean and sanitary condition; and (v) Grantee shall not do or permit to be done anything upon the Easement Area that may subject City to any liability for injury or damage to person or property, or result in a violation of any Laws. Grantee shall notify the City in writing not less than sixty (60) days prior to any proposed assignment or transfer of interest in this Easement. Grantee shall identify the name and address of the proposed assignee/ transferee and deliver to the City original or certified

copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Easement Agreement and any other information or documentation requested by the City. The City shall not unreasonably withhold the consent to assignment or transfer.

8. Indemnification. Grantee shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages ("Losses") as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Grantee or Grantee's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this Easement Agreement.

Grantee agrees to cooperate in the event any litigation is brought against the City by any party seeking to enjoin, restrain, or stop the Work contemplated by this Agreement. Nothing contained herein shall be construed as prohibiting City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Grantee shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.

At the City Corporation Counsel's option, Grantee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Grantee of any of its obligations under this Easement Agreement. Any settlement of any claim or suit related to activities conducted under this Easement by Grantee must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

To the greatest extent permissible by law, Grantee waives any limits to the amount of its obligations to indemnify, defend, or contribute to any sums due under any Losses, including any claim by any employee of Grantee that may be subject to the Illinois Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision, including without limitation, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute. All provisions of this section shall survive completion, expiration, or termination of this Agreement.

9. Insurance. Grantee agrees that it will, at its expense, maintain a policy of insurance, written by responsible insurance carriers with a Best rating of "A" or better,

approved by City that will insure against liability for injury to or death of persons or damage to property occurring about the Access Easement Area or Water Service Easement Area. Grantor will be named as an additional insured. The liability under insurance will be at least \$1 million for any one person injured or killed or any one occurrence, \$2 million general aggregate coverage for any one accident, and \$100,000.00 property damage. Annually, Grantee shall provide copies of the insurance policy and all endorsements thereto to Grantor. Grantee shall send the policy to the Law Department on or before January 1st of every year this Lease is in effect. If the Grantee fails to comply with this requirement, that shall constitute a default by Grantee.

Upon City's written request, Grantee shall provide City with copies of the actual insurance policies within ten (10) days of City's request for same. Such certificates and insurance policies shall clearly identify the premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance Grantee to the City. The provisions of this paragraph shall in no way limit the liability of the Grantee as set forth in the provisions of paragraph 8 above.

10. Compliance with Laws. Grantee, at its cost and expense, shall be responsible for obtaining any and all permits and other governmental approvals with respect to the build out of the restaurant and this agreement does not provide any governmental approval beyond the granting of the easement, which may be required for the use of the Easement Area and exercise of its rights pursuant to this Easement Agreement. Grantee shall at all times comply with all applicable legal or governmental statutes, laws, codes, orders, requirements, regulations, ordinances and rules (collectively, "Laws").

11. Default. It shall be considered a "Default" under this Easement Agreement if Grantee fails to substantially comply with any provision of this Easement Agreement and does not cure such failure within 30 days after notice, except where the default cannot reasonably be cured in 30 days, in which case if Grantee has begun and continues efforts to remedy the default as soon as practicable, then such additional time shall be given to remedy the default. In the event of a Default, the City may terminate this Easement Agreement by written notice to Grantee. Such termination right shall be in addition to all rights and remedies available to the City at law or in equity.

12. Third Party Beneficiaries; No Effect on Other Rights of the Parties. This Easement Agreement is not intended to and in no way confers any rights upon third parties. This Easement Agreement is not intended to and in no way confers any rights of access or use by the Parties, or any other third party, to either Party's Alley Easement Area except as specifically described herein.

13. Attorneys' Fees, Jurisdiction for Disputes, and Governing Law. Should a party incur costs, charges and expenses, including court costs and attorneys' fees, to enforce rights or obligations under this Easement Agreement, then such costs, charges, and expenses shall be recoverable from the other party. This Agreement shall be

governed by and construed and enforced in accordance with the laws of the State of Illinois, excluding its choice of law rules. In the event of a dispute hereunder, the parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, Cook County, Illinois.

14. Notices. Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communication, by facsimile together with confirmation of transmission; (c) overnight courier; or (d) registered or certified United States mail, postage prepaid, return receipt requested.

If to Grantee: The Barn Investment LLC
 1232 Maple Avenue
 Evanston, IL 60202

If to the Grantor: City of Evanston
 Attn: City Manager
 2100 Ridge Avenue
 Evanston, Illinois 60201

With a copy to: City of Evanston
 Attn: Corporation Counsel
 2100 Ridge Avenue
 Evanston, IL 60201

15. Entire Agreement. This Easement Agreement shall constitute the entire contract between the parties and shall supersede any and all prior agreements between the parties hereto with respect to the granting use of the Easement Area to Grantee. No modification, waiver or amendment of this Easement Agreement or any provision hereof shall be valid unless the same is in writing, and signed by both parties hereto.

16. Counterparts. This Easement Agreement may be executed in any one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one Easement Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date executed by the City.

THE BARN INVESTMENT LLC, an Illinois limited liability company

CITY OF EVANSTON, a municipal corporation in the State of Illinois

By: _____

By: _____

Name: _____

Name: _____

Title: Manager

Title: _____

Date: _____

Date: _____

EXHIBIT 1
PLAT OF EASEMENT

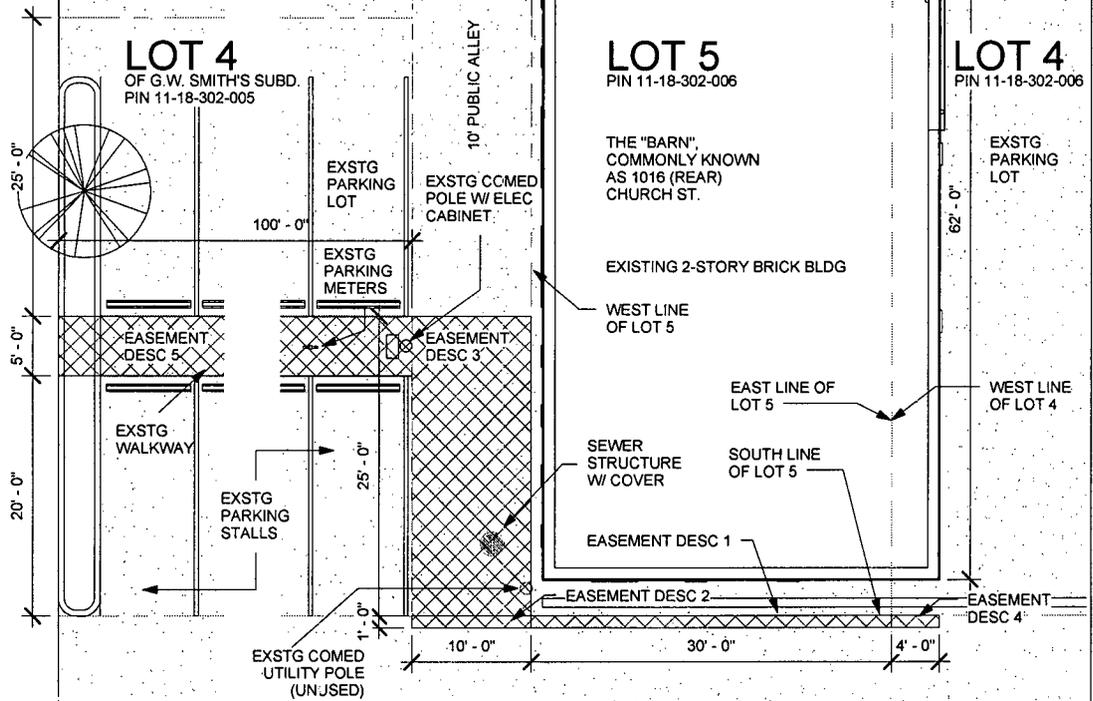
PLAT OF EASEMENT

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OF

1. EASEMENT FOR WALKWAY TO THE "BARN" PROPERTY TO BE THE NORTH 1.0' OF THE PUBLIC ALLEY S. OF AND ADJOINING THE E. 30' OF LOT 5 IN BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
2. ALSO EASEMENT FOR WALKWAY TO THE "BARN" PROPERTY TO BE THE NORTH 1.0' OF SAID ALLEY EXTENDED 10' W. OF WESTLINE OF THE E. 30' OF SAID, LOT 5 IN BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
3. ALSO EASEMENT FOR WALKWAY TO THE "BARN" PROPERTY & FOR WATER MAIN TO "BARN" PROPERTY TO BE THE 10' PUBLIC ALLEY WEST OF AND ADJOINING THE SOUTH 25' OF THE EAST 30' OF LOT 5 IN BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
4. ALSO EASEMENT FOR WALKWAY TO THE "BARN" PROPERTY TO BE THE NORTH 1.0' OF THE PUBLIC ALLEY S. OF AND ADJOINING THE W. 4' OF LOT 4 IN BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS
5. EASEMENT FOR WALKWAY TO THE "BARN" PROPERTY & FOR WATER MAIN TO "BARN" PROPERTY TO BE THE NORTH 5.0' OF THE SOUTH 25.0' OF LOT 4 IN G.W. SMITH'S SUBDIVISION OF LOT 6 AND THE W. 40' OF LOT 5 OF BLOCK 67 IN THE ORIGINAL VILLAGE (NOW CITY) OF EVANSTON IN THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS,

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WE, MCKIERNAN SURVEYING, DO HEREBY CERTIFY THAT WE HAVE PREPARED THIS PLAT OF EASEMENT FROM EXISTING PLATS AND PLANS FOR THE PURPOSE OF GRANTING EASEMENTS FOR WATER SERVICE AND FOR PEDESTRIAN WALKWAYS AS SHOWN HEREON.

MCKIERNAN SURVEYING

BY

PATRICK F. MCKIERNAN
ILLINOIS PROFESSIONAL LAND SURVEYOR
LICENSE # 035002131
LICENSE EXPIRATION DATE 11/30/2016

20' PUBLIC ALLEY
(CONCRETE PAVEMENT)

