

1-R-19

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute a Temporary Construction Easement Agreement with Fifth Third Bank for the Main Street Corridor Improvement Project

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

SECTION 1: The City of Evanston will upgrade the existing signalized intersection at Main Street and McDaniel Avenue; construct a new signalized intersection at the east entrance to the Main Street Marketplace; make sidewalk and driveway improvements for pedestrian and ADA access, and other right-of-way improvements between the west City Limits and Hartrey Avenue ("Right-of-Way Improvements").

SECTION 2: The Right-of-Way Improvements require the reconstruction of the three access driveways and adjacent sidewalks to the Main Street Marketplace Resubdivision. In order to construct the Right-of-Way Improvements, the City seeks a temporary construction easement from private property owners to ensure that the contractor has adequate area and access available for equipment, vehicles and material for the purposes of facilitating the construction.

SECTION 3: The City Manager is hereby authorized to execute the attached Temporary Construction Easement Agreements with Fifth Third Bank for the City to receive a temporary construction easement to construct the referenced Right-of-Way Improvements. The Temporary Easement Agreement is attached as Exhibit 1 and incorporated herein by reference.

SECTION 4: 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 5: Resolution 1-R-19 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Stephen H. Hagerty, Mayor

Attest: 

Devon Reid, City Clerk

Approved to form:


Michelle L. Masoncup, Corporation Counsel

Adopted: January 14, 2019

EXHIBIT 1

TEMPORARY EASEMENT AGREEMENT

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of January, 2019, by and among Fifth Third Bank ("Grantor") and the City of Evanston, an Illinois municipal corporation ("Grantee"); the Grantor and Grantee shall be referred to herein collectively as the "Parties":

WITNESSETH:

1. The Grantor, in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, does hereby give, grant and convey unto the Grantee a non-exclusive temporary construction easement ("Temporary Construction Easement") over that portion of the property of the Grantor, situated in the City of Evanston, County of Cook, Illinois, and more particularly described as Lot 2 in Main Street Commons Resubdivision, recorded November 21, 2005 as Document 0532539031 in Cook County Illinois (the "Grantor Tract"), identified as "Temporary Easement #1" and "Temporary Easement #2" on Exhibit A attached hereto (collectively, the "Easement Area") and made a part hereof.

2. Together with the right of the Grantee, its successors and assigns, to go on the Easement Area with necessary labor, equipment, vehicles and material for the purposes of facilitating the construction of a signalized intersection, sidewalk improvements and other right-of-way improvements at the corners of Main Street and the two western entrances to the Main Street Commons Resubdivision ("Right-of-Way Improvements").

3. The Temporary Construction Easement may be used solely to enter in, upon, under and across that portion of the Easement Area for the construction of the Right-of-Way Improvements. All costs and expenses related to the construction of the Right-of-Way Improvements shall be the sole responsibility of Grantee.

4. The Temporary Construction Easement shall terminate on the earlier of (i) the date Grantee completes construction of the Right-of-Way Improvements or (ii) December 31, 2019. Grantee will use all commercially reasonable commercial efforts to commence construction of the Right-of-Way Improvements by May 15, 2018 and complete construction by November 1, 2019.

5. This Temporary Construction Easement shall include the right and obligation of Grantee to grade, fill, and place topsoil to restore the Easement Area to its condition that existed prior to the Grantee's entry.

TO HAVE AND TO HOLD the above granted Temporary Construction Easement unto the Grantee, its successors and assigns, during the term of this Agreement.

And the Parties hereby covenant as follows:

1. That the Grantor is lawfully seized of the Easement Area upon which said Temporary Construction Easement is granted, and has title to the Easement Area, and the Grantor therefore has good and lawful right to convey the Temporary Construction Easement referenced herein.

2. Grantor, without limiting the interest above granted and conveyed, acknowledges that upon payment of the agreed consideration, Grantee waives and releases all claims for diminution in value to the Grantor Tract caused by the opening, improving and using the Right-of-Way Improvements. This acknowledgment does not waive any claim for (a) trespass or negligence against the Grantee or Grantee's contractors or agents which may cause damage to the Grantor's

remaining property, or (b) breach by Grantee of any other the terms of this Agreement. Grantee covenants and agrees that it shall indemnify, hold harmless and defend Grantor from and against any losses, costs, claims and actions for damages to property or injury to persons arising out of the existence, installation, maintenance, repair or removal of any improvements to the Easement Area made by, or on behalf of, Grantee under the authority of this Agreement, or any other activities undertaken by or on behalf of Grantee under the authority of this Agreement.

3. That the Grantor does hereby expressly permit entry by the Grantee for any purpose hereof upon the Easement Area without furnishing notice of said entry to Grantor.

4. The Temporary Construction Easement is granted to the Grantee only for the purpose stated herein and for no other purpose, and the Grantee shall not be entitled to use the Easement Area for any other purpose. The Temporary Construction Easement shall be used by Grantee in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of Grantor or any other party at any time conducted on Grantor Tract, including, without limitation, public access to and from said the Grantor Tract. Grantor shall have the right to construct or allow to be constructed any building, structure or other improvements on the Easement Area, and to plant or allow to be planted any trees, shrubs, bushes, undergrowth or other vegetation on the Easement Area, and to make any other use whatsoever of the Easement Area, provided that such activities do not materially impair the easement right granted to Grantee herein.

5. Any construction undertaken by Grantee shall be diligently prosecuted to completion in a good and workmanlike manner, in compliance with all applicable laws, codes, rules and regulations, and so as to minimize any interference with the business of Grantor or any occupants of the Grantor Tract. All lands, landscaping and/or other improvements from time to time disturbed within the Easement Area by Grantee shall, at the expense of Grantee, be restored by Grantee to a condition which is equal to or better than the condition which existed prior to such disturbance. Restoration shall include replacing topsoil, reestablishing grass vegetation, and repairing or replacing pavement in the Easement Area. Grantee shall indemnify and hold harmless Grantor from all damages, losses, liens or claims attributable to the performance of work on or on the Easement Area by Grantee or its agents or employees. Nothing set forth herein shall permit Grantee (or its agents, contractors, invitees, customers, or employees) to use the Easement Area or any other property of Grantor for construction staging (of materials, equipment or otherwise) or for any other purpose not expressly provided herein.

6. The easement created and established in this Agreement do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGES FOLLOW.]

GRANTEE:

CITY OF EVANSTON

An Illinois municipal corporation

By: _____

Name: _____

Its: _____

STATE OF ILLINOIS)

SS.

COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, who is personally known to me to be the _____ of the City of Evanston, Illinois, a municipal corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as such City Manager and as her free and voluntary act and as the act and deed of the City of Evanston, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this _____ day of _____, 2019.

Notary Public
(Type or Print Name)

My Commission Expires:

EXHIBIT A
(SEE ATTACHED - TEMPORARY EASEMENT)

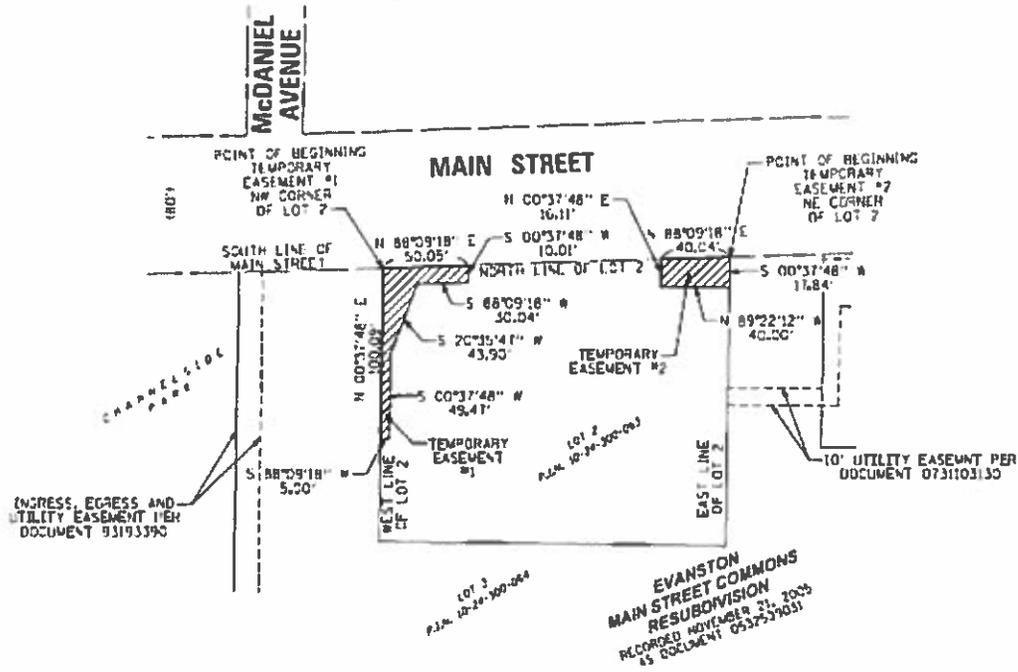
EXHIBIT

LEGAL DESCRIPTION - TEMPORARY EASEMENT #1:

THAT PART OF LOT 2 OF EVANSTON MAIN STREET COMMONS RESUBDIVISION, RECORDED NOVEMBER 21, 2005 AS DOCUMENT 0532539031, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:
 BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 2; THENCE NORTH 88 DEGREES 09 MINUTES 18 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 2, SAID LINE BEING ALSO THE SOUTH LINE OF MAIN STREET, ON A BEARING BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD '83 (2011 ADJUSTMENT), 50.05 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 48 SECONDS WEST, 10.01 FEET; THENCE SOUTH 88 DEGREES 09 MINUTES 18 SECONDS WEST, 30.04 FEET; THENCE SOUTH 20 DEGREES 35 MINUTES 47 SECONDS WEST, 43.90 FEET; THENCE SOUTH 00 DEGREES 37 MINUTES 48 SECONDS WEST, 49.47 FEET; THENCE SOUTH 88 DEGREES 09 MINUTES 18 SECONDS WEST, 5.00 FEET TO THE WEST LINE OF SAID LOT 2; THENCE NORTH 00 DEGREES 37 MINUTES 48 SECONDS EAST ALONG SAID WEST LINE, 100.03 FEET TO THE POINT OF BEGINNING, CONTAINING 1.255 SQUARE FEET, OR 0.029 ACRE, MORE OR LESS.

LEGAL DESCRIPTION - TEMPORARY EASEMENT #2:

THAT PART OF LOT 2 OF EVANSTON MAIN STREET COMMONS RESUBDIVISION, RECORDED NOVEMBER 21, 2005 AS DOCUMENT 0532539031, COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:
 BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 00 DEGREES 37 MINUTES 48 SECONDS WEST ALONG THE EAST LINE OF SAID LOT 2, ON A BEARING BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD '83 (2011 ADJUSTMENT), 17.84 FEET; THENCE NORTH 89 DEGREES 22 MINUTES 12 SECONDS WEST, 40.00 FEET; THENCE NORTH 00 DEGREES 37 MINUTES 48 SECONDS EAST, 16.11 FEET TO THE NORTH LINE OF SAID LOT 2, SAID LINE BEING ALSO THE SOUTH LINE OF MAIN STREET; THENCE NORTH 88 DEGREES 09 MINUTES 18 SECONDS EAST ALONG SAID NORTH LINE, 40.04 FEET TO THE POINT OF BEGINNING, CONTAINING 0.79 SQUARE FEET, OR 0.016 ACRE, MORE OR LESS.



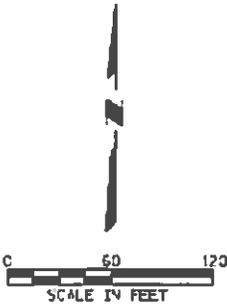
STATE OF ILLINOIS)
 COUNTY OF COOK)

THIS EXHIBIT WAS PREPARED UNDER THE DIRECTION OF AN ILLINOIS PROFESSIONAL LAND SURVEYOR

GIVEN UNDER MY HAND AND SEAL THIS _____ DAY OF _____ 2018 IN CHICAGO, ILLINOIS.

ENVIRONMENTAL DESIGN INTERNATIONAL INC.

MICHAEL T. RING, PLS NO. 3244
 LICENSE EXPIRES: 11/30/2018



SHEET 1/1



Environmental Design International Inc.
 1111 Survey, Engineering and Construction Associates
 317 W. MONROE STREET, SUITE 1820, CHICAGO, IL 60602
 PH: (312) 343-1400 Fax: (312) 343-0500
 www.edi-intl.com

CLIENT: STANLEY CONSULTANTS
 8501 W. HIGGINS ROAD
 SUITE 730
 CHICAGO, IL 60651

PROJ. No: 1743.003
 DATE: 11/09/18
 DRAWN BY: LAC
 APPROVED BY: MTR

PROJECT: MAIN STREET-EVANSTON, IL