

5/2/2019

3-R-19

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute an Easement Agreement with 1815 Ridge Avenue, 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 1815 Ridge Avenue, 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 3-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.

Attest:



Devon Reid, City Clerk


Stephen H. Hagerty, Mayor

Approved to form:



Michelle L. Masoncup, Corporation Counsel

Adopted: May 13th, 2019

EXHIBIT 1
PLAT OF EASEMENT

PLAT of EASEMENT

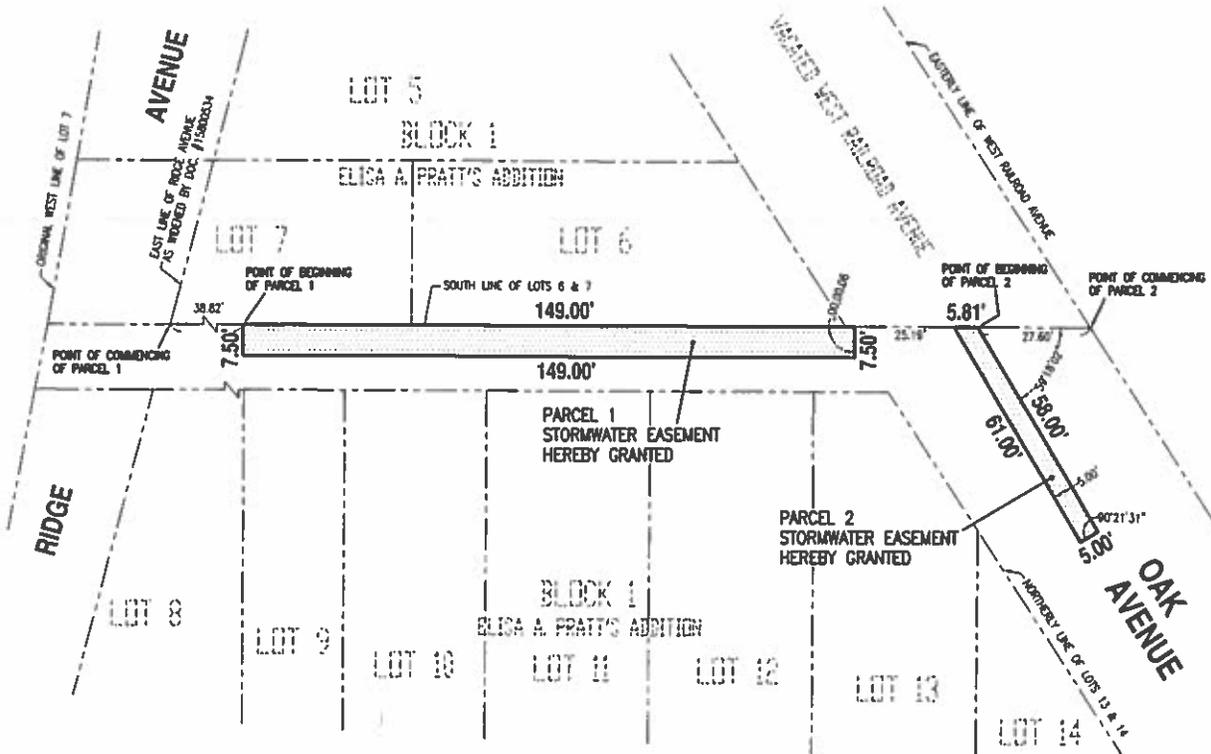
Legal Description:

PARCEL 1:

THAT PART OF THE 16 FOOT WIDE ALLEY LYING SOUTH OF LOTS 6 AND 7 IN THE RESUBDIVISION OF BLOCK 1 IN ELISA A. PRATT'S ADDITION TO EVANSTON DESCRIBED AS FOLLOWS:
 COMMENCING AT THE INTERSECTION OF THE EAST LINE OF RIDGE AVENUE AS WIDENED BY DOCUMENT NUMBER 15800534 AND THE SOUTH LINE OF SAID LOTS 6 AND 7; THENCE EAST, ALONG SOUTH LINE OF SAID LOTS, 38.82 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EAST ALONG THE SOUTH LINE AND ITS EXTENSION OF SAID LOTS 149.00 FEET; THENCE SOUTH AT RIGHT ANGLES 7.50 FEET; THENCE WEST AT RIGHT ANGLES 149.00 FEET; THENCE NORTH 7.50 FEET TO THE POINT OF BEGINNING, ALL IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF RAILROAD AVENUE LYING NORTHEASTERLY OF LOTS 13 AND 14 IN THE RESUBDIVISION OF BLOCK 1 IN ELISA A. PRATT'S ADDITION TO EVANSTON DESCRIBED AS FOLLOWS:
 COMMENCING AT THE INTERSECTION OF THE EAST LINE OF RAILROAD AVENUE AND THE SOUTH LINE OF LOTS 6 AND 7 IN SAID ADDITION PRODUCED EAST; THENCE WEST, ALONG SAID SOUTH LINE EXTENDED, 27.60 FEET TO THE POINT OF BEGINNING; THENCE SOUTHEASTERLY, ALONG A LINE FORMING AN ANGLE OF 59 DEGREES, 18 MINUTES, 02 SECONDS AS MEASURED FROM EAST TO SOUTHEAST WITH THE LAST DESCRIBED LINE A DISTANCE OF 58.00 FEET; THENCE SOUTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 90 DEGREES, 21 MINUTES, 31 SECONDS AS MEASURED FROM NORTHWEST TO SOUTHWEST WITH THE LAST DESCRIBED LINE, 5.00 FEET; THENCE NORTHWESTERLY ALONG A LINE FORMING AN ANGLE OF 89 DEGREES, 38 MINUTES, 29 SECONDS AS MEASURED NORTHEAST TO NORTHWEST WITH THE LAST DESCRIBED LINE, 61.00 FEET; THENCE EAST 5.81 FEET TO THE POINT OF BEGINNING, ALL IN SECTION 18, TOWNSHIP 41 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.



SUBMITTED BY :

B. H. SUHR & COMPANY, INC.

SURVEYORS ESTABLISHED 1911
 450 SKOKIE BLVD. SUITE 105, NORTHBROOK, ILL. 60062
 TEL. (847) 864-4315 / FAX (847) 864-9341
 E-MAIL: SURVEYOR@BHSUHR.COM

LOCATION 1815 RIDGE AVENUE ORDER No. 18-51-E-1
 NORTHBROOK, DECEMBER 17 20 18
 ORDERED BY: KIMLEY-HORN

R. R. HANSEN MEMBER: I.P.L.S.A. N.S.P.S. Professional Design Firm License No. 184-002871 RR

STATE OF ILLINOIS }
 COUNTY OF COOK }
 Approved and accepted by the City Council of the City of Evanston,
 Cook County, Illinois on the day of _____, 20____.

By: _____
 City Clerk, Evanston, Illinois

NORTHBROOK DECEMBER 17, 2018

STATE OF ILLINOIS }
 COUNTY OF COOK }
 We, B. H. Suhr & Co., Inc., do hereby certify that we have prepared this
 plat of easement from existing plats and plans, for the purpose of granting
 a non exclusive Storm Water easement as shown hereon.

B.H. SUHR & COMPANY, INC.
 SURVEYORS
 By: Raymond E. Hansen
 Raymond E. Hansen
 Illinois Professional Land Surveyor No. 035-002542
 License Expiration Date 11/30/20

RAYMOND R. HANSEN
 2542
 PROFESSIONAL
 LAND
 SURVEYOR
 STATE OF
 ILLINOIS
 NORTHBROOK, ILL.

Prepared by and return to:
City of Evanston
Attn: Law Department
2100 Ridge Avenue, Room 4400
Evanston, IL 60201

[Recording area]

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("**Easement Agreement**") is by and between CITY OF EVANSTON (the "**Grantor**") and 1815 Ridge Avenue, LLC, an Illinois limited liability company (the "**Grantee**") (each referred to herein as "**Party**" or, collectively, as "**the Parties**").

RECITALS

WHEREAS, Grantee is the owner of certain vacant real property at 1815-1823 Ridge Avenue, Evanston Illinois (the "**Property**"); and

WHEREAS, On July 25, 2016, the City Council approved Ordinance 47-O-16 granting a special use for a planned development and special use approval for an independent and assisted living facility located at 1815 – 1823 Ridge Avenue and Amending the Zoning Map to Re-zone Certain properties from the C2 Commercial Zoning District to D4 Downtown Transition Zoning District (the "**Development**"); and

WHEREAS, As authorized by Ordinance 47-O-16, and as part of the construction of the Development, the Grantee will construct certain improvements for the Development, and requests to install a storm water control system under the right-of-way owned by the City of Evanston in the east/west alley, east of Ridge Avenue and north of Clark Street (Parcel 1 stormwater easement) and on Oak Avenue from the east/west alley south approximately 60 feet (Parcel 2 stormwater easement), as fully depicted in the plat of easement (collectively, the "**Easement Areas**"); and

WHEREAS, the Easement Area Improvements are depicted on the plat of easement attached to this Agreement as Exhibit 1 (the "**Plans**"); and

WHEREAS, The Parties seek to formalize the Grantee's use of the Easement Areas by entering into this Easement Agreement for a permanent easement for the purpose of installing a stormwater control system in accordance with the plans

submitted and to be approved by the City, and maintaining the Proposed Improvements, all at no cost to the Grantor,

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. Alley Improvements and Construction.

a. Construction in Accordance with Plans. The construction and installation of the Proposed Improvements shall be in accordance with the Plans prepared at the Grantee's sole expense and supplied to the Grantor by the Grantee. No work shall commence until final Plans and specifications are provided to the Grantor for review and approval prior to construction. The Grantee will construct the Proposed Improvements in a good and workmanlike manner at its sole cost, risk, and expense.

b. Right-of-Way Permit. The Grantee must complete construction of the Project within the time period provided in the Right-of-Way permit and obtain this permit separate and apart from this easement to be issued by the Grantor. The Grantee agrees to protect all existing utility lines that lie below the Easement Area. Grantee agrees to restore the Grantor's property within the easement area to the original condition prior to construction, at no cost or expense to Grantor.

2. Easement. The Grantor hereby grants to the Grantee, with at least 3 business days written notice via email to the Director of Public Works, its employees and contractors, a permanent easement to enter, re-enter, occupy and use the portion of the Easement Area depicted on the Plat of Easement attached to this Easement Agreement as Exhibit 2 (the "Easement Area") to remove the Existing Improvements and to survey, construct, use, operate, inspect, maintain, repair, replace, and operate the Proposed Improvements in accordance with the final Plans, including all underground and surface appurtenances thereto, including electric and water lines (the "Permitted Activities"). As part of the Permitted Activities, the Grantee agrees to perform all necessary maintenance and repair of the Proposed Improvements within the Easement Area.

Nothing contained in this Easement Agreement shall be construed to give to the Grantee any right in and to the title to the Easement Area, but must only be construed to give it the right to construct, maintain, and use the Proposed Improvements within the Easement Area upon the terms and provisions herein set forth. Nothing in this Easement Agreement contained can be construed to prevent the Grantor from making use of the Easement Area in a manner that does not interfere with the Grantee's performance of the Permitted Activities. However, if the Grantor's use of the Easement Area damages or disturbs any portion of the Proposed Improvements, the Grantor shall, at no cost to the Grantee, restore the Proposed Improvements to the condition they were in before they were damaged or disturbed by the Grantor. Grantor has the ability

to access the Easement Area for inspection, repairs, replacement for any Grantor municipal purposes with notice to Grantee, in cases of emergencies, notice will be provided at a reasonable time and after Grantor has accessed the Easement Area to perform any and all necessary work.

3. Covenant. This grant shall constitute a covenant, which runs with the land, and shall be binding upon the legal representatives, successors and assigns of the Grantee and the Grantor, as the owner of the Property and the Development, the benefitted property of the easement. Grantee shall notify Grantor within 60 days after of any conveyance of the Property and the Development to a third party not owned or controlled by, or that does not own and control, Grantor.

4. Easement Fee. In consideration of the Grantee constructing and maintaining, and any future repairs to the Proposed Improvements and the Easement Area, the Grantor will not assess an easement fee or any other fee or charge for use of the Easement Area. The Grantee shall be solely responsible for any cost and expenditure associated in anyway with the Grantee's performance of the Permitted Activities.

5. Easement Term. The term of the permanent easement granted by Section 2 of this Easement Agreement shall be for a term of fifty (50) years unless this Easement Agreement is terminated as a result of a Default in accordance with Section 10 of this Agreement.

6. Environmental. The Parties 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 in the Easement Area that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances.

"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 Environmental Laws 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. The 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; and (iv) the Grantee shall not do or permit to be done anything under the Easement Area that may subject the Grantor to any liability for injury or damage to person or property, or result in a violation of any Laws.

8. Indemnification.

a. The Grantee shall defend, indemnify and hold harmless the Grantor 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 judgments or settlements, to the extent resulting from or arising out of any negligent or willful act or omission on the part of the Grantee or the Grantee's subcontractors, employees, agents or subcontractors during the performance of the construction of the Proposed Improvements or any future maintenance and repair work within the Easement Area. 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.

b. The Grantor shall defend, indemnify and hold harmless the Grantee from any and all Losses as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs and fees, judgments or settlements, to the extent resulting from or arising out of any negligent or willful act or omission on the part of the Grantor or the Grantor's subcontractors, employees, agents or subcontractors during the performance of any work or activities within the Easement Area. This provision shall survive completion, expiration, or termination of this Easement Agreement.

c. The Parties agree to cooperate in the event any litigation is brought against one or both of the Parties by any third party seeking to enjoin, restrain, or stop the work contemplated by this Agreement. Nothing contained herein shall be construed as prohibiting the Grantee, 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. Nothing herein shall be construed as a limitation or waiver

of defenses available to the Grantor and its employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 et seq.

9. Insurance. The Grantee shall carry and maintain at its own cost all necessary liability insurance (which shall include as a minimum the requirements set forth below) during the period of construction and during times of major repair of the Proposed Improvements, for damages caused or contributed to by the Grantee or its employees or contractors, and insuring the Grantee against claims which may arise out of or result from the Grantee's performance or failure to perform the Permitted Activities hereunder: comprehensive general liability coverage, and designating the Grantor as additional insured for not less than \$2,000,000 combined single limit for bodily injury, death and property damage, per occurrence. If requested, the Grantee will provide certificates of the policies of insurance evidencing the coverage and amounts set forth in this Section. The Grantee understands that the acceptance of certificates, policies and any other documents by the Grantor in no way releases the Grantee and its subcontractors from the requirements set forth herein.

10. Default. It shall be considered a "Default" under this Easement Agreement if either Party fails to substantially comply with any provision of this Easement Agreement and does not cure such failure within 60 days after written notice, except where the default cannot reasonably be cured in 60 days, in which case if the noncompliant Party 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, then either Party may terminate this Easement Agreement by written notice to other Party. Such termination right shall be in addition to all rights and remedies available to either party at law or in equity, including, without limitation, specific performance.

11. 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.

12. Attorneys' Fees, Jurisdiction for Disputes, and Governing Law 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.

13. 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 the Grantee: 1815 Ridge Avenue LLC
225 W. Hubbard, Suite 600
Chicago, IL 60654

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

14. 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 the 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.

15. 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

1815 RIDGE AVENUE LLC

CITY OF EVANSTON

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____