

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: \*5.n

Title:

**Recommendation to Approve Land Acquisition Easement Agreement Between the City of St. Charles and Medical Building Located at 110 S. 17<sup>th</sup> Street**

Presenter:

Peter Suhr

Meeting: Government Services Committee

Date: November 26, 2018

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted: ☐**Executive Summary** *(if not budgeted please explain):*

In preparation of the New Police Station Construction Project, the City purchased Lot 4 of the former Valley Shopping Center property. The Lot 4 property includes land that surrounds a medical building which is owned by Canal Winchester LLC. and is located along 17<sup>th</sup> Street. This particular land includes two separate parking lots (north and south of existing medical building) which are currently and historically been exclusively used by staff and customers of the medical building.

As was originally planned when the City purchased Lot 4, staff is seeking approval to transfer ownership of the north parking lot to Canal Winchester LLC. In addition, staff is seeking approval of a parking and trash enclosure easement on the south parking area to the medical building for their use of said space.

By doing so, the medical building patrons and staff will be able to use the parking lots surrounding the medical building as was always intended. The City would agree to resurface/ restripe the existing parking lot as part of this agreement and split the cost with Canal Winchester. Total project costs for this work are anticipated to be no more than \$20,000 and ongoing maintenance and reconstruction of the parking area will be the responsibility of the new owner.

**Attachments** *(please list):*

\*Second Restated and Amended Easement Agreement

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Second Restated and Amended Easement Agreement Between the City of St. Charles and Canal Winchester LLC.

## **SECOND RESTATED AND AMENDED EASEMENT AGREEMENT**

This Second Restated and Amended Easement Agreement (“Agreement”) is made this 3<sup>rd</sup> day of December, 2018, by and between the City of St. Charles, an Illinois Municipal Corporation (hereinafter referred to as “Grantor”), and Canal Winchester LLC, an Illinois Limited Liability Company (hereinafter referred to as “Grantee”).

### **RECITALS**

WHEREAS, Grantor is the owner of a tract of land upon which it intends to construct a new Police Station complex, and which is legally described in “Exhibit A” attached hereto and incorporated herein as “Lot 1;” and,

WHEREAS, Grantee is the owner of a tract of land which is improved with a two-story medical office building and legally described in “Exhibit B” attached hereto and incorporated herein and referred to as “Lot 2;” and,

WHEREAS, certain driveways (“Driveway Premises”) run through and over and across Lot 1 and provide access to Main Street, Fourteenth (14th) Street and Seventeenth (17th) Street as more fully described in the Declaration with respect to the Valley Shopping Center Resubdivision dated April 25, 2018 and recorded in the office of the Kane County Recorder on April 30, 2018 as Document 2018K019689, attached hereto as and incorporated herein as “Exhibit C;” and,

WHEREAS, a paved parking lot for tenants, occupants and patients of the medical building is located to the north of the medical building on Lot 1, and which, along with land to the east and west of the medical building is depicted and legally described on “Exhibit D” attached hereto and incorporated herein; and,

WHEREAS, an area to the south of the medical building contains parking spaces and a trash enclosure which are located on Lot 1 and used exclusively by the occupants, employees and patients of the medical building facility. That portion of Lot 1 is depicted on “Exhibit E” along with access to the trash enclosure and parking spaces from 17th Street as depicted and legally described thereon; and,

WHEREAS, that the Grantor and Grantee recognize that substantial changes have occurred with respect to the use and configuration of Lot 1 since the Restated and Amended Easement Agreement executed by their predecessors in interest on June 13, 1994, which was recorded in the office of the Kane County Recorder as Document 94K051274 have taken place; and,

WHEREAS, the Grantor and the Grantee agree that it is in their best interests that the Restated and Amended Easement Agreement dated June 13, 1994, and recorded in the office of the Kane County Recorder as Document 94K051274 be further amended and restated in its entirety.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree to the following grants, agreements, covenants and restrictions:

1. Release of Prior Easements. Grantor and Grantee, their successors and assigns, agree that all prior easements granted by virtue of the Restated and Amended Easement Agreement dated June 13, 1994 and recorded in the office of the Kane County Recorder as Document 94K051274 are hereby released.

2. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, as easements appurtenant to Lot 2, in perpetuity a non-exclusive easement for ingress and egress across its property and to Main Street, Fourteenth (14th) Street and Seventeenth (17th) Street at the access points shown on "Exhibit C" and such other access points as may be installed in the future and through the Driveways described thereon.

3. Parking Area, (10 Parking Spots): Grantor hereby grants to Grantee an exclusive easement for parking on ten (10) parking spaces and exclusive use of a trash enclosure located on Lot 1 and depicted on "Exhibit E" (the "Parking and Trash Easement"). Grantor shall repave the Parking and Trash Easement Area concurrently with the repaving of the Conveyance Parcel. The repaving cost shall be shared equally between the Grantor and Grantee.

4. Conveyance of Parcel. Grantor agrees to convey to Grantee the parcel of land described in "Exhibit D" (the "Conveyance Parcel"). Grantor shall resurface and restripe the existing paved parking lot presently located on the Conveyance Parcel by November 15, 2019. The resurfacing and restriping costs shall be shared equally between the Grantor and the Grantee. The consideration for said transfer is the release of the prior Easement obligations described herein.

6. Real Estate Taxes. In the event that the exclusive Parking and Trash Easement granted to the Grantee from the Grantor gives rise to a real estate tax assessment by the Kane County Supervisor of Assessments, the Grantee shall be responsible for payment of said real estate taxes as they become due.

7. Warranties of Title. Grantor and Grantee represent and warrant to each other that they have good and marketable fee simple title to the real estate comprising the Easement Premises.

8. Running of Benefits and Burdens. All provisions of this instrument, including the benefits and burdens and all covenants, representations and warranties, shall run with the land and are binding upon and inure to the respective assigns, successors, tenants, and mortgagees of the parties hereto.

9. Notices. From and after closing under the Contract, all notices and demands hereunder shall be delivered to Grantee at Canal Winchester LLC, 9440 Enterprise Drive, Mokena, Illinois 60448, and to Grantor at 2 E. Main Street, St. Charles, Illinois 60174. All notices shall be sent by registered or certified mail, return receipt requested, to the addresses provided for in this paragraph and shall be deemed given five days after being placed in the mail.

10. Governing Law. This Agreement shall be governed by the laws of the state of Illinois.

11. Amendment. This Agreement may be amended only by an instrument signed by each party, and the holder of record of each mortgage encumbering each party's Lot.

12. Amendment and Restatement. This Second Amended Restated Easement Agreement amends and restates the Restated and Amended Easement Agreement recorded on June 23, 1994 as Document No.: 94K051274 in the Kane County Recorder of Deeds Office in its entirety.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunder set their hands and seals as of this 3rd day of December, 2018.

GRANTOR:  
City of St. Charles,

GRANTEE:  
Canal Winchester, LLC

\_\_\_\_\_  
By: Raymond Rogina, Mayor

\_\_\_\_\_  
By: Michael H. Rose, its Manager

ATTEST:

\_\_\_\_\_  
Charles Amenta, City Clerk

## ACKNOWLEDGEMENT

STATE OF ILLINOIS) ) ss:  
COUNTY OF KANE )

BE IT REMEMBERED that on this 3<sup>rd</sup> day of December, 2018, before me, a notary public in and for said County and State, came Raymond Rogina and Charles Amenta, Mayor and City Clerk, respectively, of the City of St. Charles, Illinois, a Municipal Corporation of the State of Illinois, who are personally known to me to be the same persons who executed, as such officers, the within instrument on behalf of the City, and such persons duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last written above.

Notary Public

My Appointment Expires:

STATE OF ILLINOIS) ) ss:  
COUNTY OF KANE )

BE IT REMEMBERED that on this 3<sup>rd</sup> day of December, 2018, before me, a notary public and for said County and State, came Michael H. Rose, as Manager of Canal Winchester, LLC, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last written above.

Notary Public

My Appointment Expires:

This document prepared by  
and after Recording Mail to:  
John M. McGuirk  
Hoscheit, McGuirk, McCracken & Cuscaden, P.C.  
1001 E. Main Street, Suite G  
St. Charles, Illinois 60174

**“Exhibit A”**  
**Legal Description**

LOT 4 IN VALLEY SHOPPING CENTER RESUBDIVISION, BEING A RESUBDIVISION IN SECTIONS 18 AND 33, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF ST. CHARLES, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 2018 AS DOCUMENT 2018K016459, IN KANE COUNTY, ILLINOIS.

**“Exhibit B”**  
**Property Description**

Address: 110 S. 17th Street, St. Charles, Illinois 60174

PIN: 09-33-126-019

Legal Description:

PARCEL ONE:

THAT PART OF THE NORTHWEST  $\frac{1}{4}$  OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF INDIANA STREET WITH A LINE DRAWN PARALLEL WITH AND 60.0 FEET EASTERLY OF THE EAST LINE (MEASURED AT RIGHT ANGLES THERETO) OF BLOCK 7, FAIRVIEW PLAZA, UNIT NO. 1, ST. CHARLES, KANE COUNTY, ILLINOIS; THENCE NORTHERLY ALONG SAID PARALLEL LINE 216.02 FEET; THENCE EASTERLY ALONG A LINE FORMING AN ANGLE OF 90 DEGREES 44 MINUTES 03 SECONDS WITH THE LAST DESCRIBED COURSE (MEASURED COUNTERCLOCKWISE THEREFROM) 65.50 FEET FOR A POINT OF BEGINNING; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 93.0 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 14.50 FEET; THENCE NORTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 8.0 FEET; THENCE WESTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 39.50 FEET TO A POINT THAT IS 70.20 FEET EASTERLY OF SAID EAST LINE (MEASURED AT RIGHT ANGLES THERETO); THENCE SOUTHERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 101.0 FEET; THENCE EASTERLY AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 54.0 FEET TO THE POINT OF BEGINNING, IN THE CITY OF ST. CHARLES, KANE COUNTY, ILLINOIS.

PARCEL TWO:

EASEMENT FOR INGRESS AND EGRESS AND PARKING CREATED BY EASEMENT AGREEMENT RECORDED MARCH 16, 1994 AS DOCUMENT 94K23822 AND RESTATED AND AMENDED EASEMENT AGREEMENT RECORDED JUNE 23, 1994 AS DOCUMENT 94K51274 FOR THE BENEFIT OF PARCEL ONE OVER ADJACENT LAND DESCRIBED IN SAID EASEMENT AGREEMENT.

“Exhibit C”

1062  
17016059AWF  
PROPERTY ADDRESS:

1605 W. Main Street  
St. Charles, IL 60174

P.I.N.:

Prepared by +  
RETURN TO:

Kevin M. Gensler, Esq.  
Dommermuth, Cobline,  
West, Gensler, et al., Ltd.  
111 E. Jefferson Avenue  
Naperville, Illinois 60540



2018K019689  
SANDY WEGMAN  
RECORDER - KANE COUNTY, IL

RECORDED: 4/30/2018 02:17 PM  
REC FEE: 53.00 RHPSP FEE: 9.00  
PAGES: 9

DECLARATION WITH RESPECT TO  
THE VALLEY SHOPPING CENTER RE-SUBDIVISION

This Declaration is made this 25 day of April, 2018, by **PLANK ROAD, LLC**, an Illinois limited liability company (“Plank Road”).

**WHEREAS**, Plank Road is the owner of the property that is the Re-subdivision of Valley Shopping Center Resubdivision, recorded April 11, 2018 as Document 2018K016459 in the office of the Kane County Recorder of Deeds (“Re-subdivision”), legally described in **Exhibit A**, which is attached hereto and made a part hereof; and

**WHEREAS**, the Re-subdivision is to be redeveloped and improved; and thereafter maintained as a first class center with driveways for the benefit of the Parcels (“Services”); and

**NOW, THEREFORE**, Plank Road declares that the real property described in **Exhibit A** is and shall be used, held, sold, conveyed, transferred, mortgaged, and encumbered subject to this Declaration which is declared to be for the purpose of maintain and enhancing the desirability, attractiveness, harmonious and proper use of the Valley Shopping Center Re-Subdivision, to wit:

CHICAGO TITLE INSURANCE COMPANY  
1795 W. STATE STREET  
GENEVA, ILLINOIS 60134

Chg

172629/1

1

2018K019689 1/9

9

62

Exhibit C (Continued)

1. The preambles to this Declaration are a material part hereof and are incorporated by reference.

2. The owner of Lot 4 in the Re-subdivision shall cooperate with the owners of all lots in the Re-subdivision to effectuate and perpetuate the use and enjoyment of the Services for the benefit of the Parcels by maintaining, snowplowing, repairing, repaving or reconstruction of the driveways in the Re-subdivision set forth on Exhibit B ("Driveways"), and the payment of the real estate taxes due pursuant to paragraph 2(b) of Document No. 2013K037521 recorded in Kane County, Illinois. All sums shall collectively be the Costs.

3. The Owner of Lot 4 in the Re-subdivision shall perform, or cause to be performed, all work in connection with the Services in a manner which will not unreasonably interfere with the continued use and enjoyment of the Driveways. The Owner of Lot 4 in the Re-subdivision shall, from time to time, notify all owners of lots within the Parcels of the cost of the work performed ("Costs"). Owners of Lots within the Parcels shall bear their share of the Costs as follows:

Re-subdivision Lot 2 9.6%

Re-subdivision Lot 3 11.9%

Re-subdivision Lot 4 63.9%

Valley Lot 1 14.6%

All owners of Lots within the Parcels shall pay their share of the Costs to the owner of Lot 4 in the Re-subdivision within 30 days' notice from the Owner of Lot 4 in the Re-subdivision.

4. No lot owner within the Parcels shall obstruct the Driveways or otherwise prevent the reasonable passage of pedestrians or vehicles over the Driveway, except in the event of emergencies or repairs.

5. All lot owners within the Parcels shall indemnify and hold the owner of Lot 4 in the Re-subdivision, its successors and assigns, harmless from and against all claims, injuries, suits, damages, costs, losses, and reasonable expenses resulting from and arising out of each owner's use of the Driveways, except where the claims, injuries, suits, damages, costs, losses and expenses arise out of the negligence or intentional acts of the owner of Lot 4 in the Re-subdivision or its agents, successors or assigns.

6. Amendments. The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by all of the record owners of the Valley Shopping Center Re-Subdivision, evidenced by a document that has been fully executed and acknowledged by such record owners and recorded in the official records of the County Recorder of Kane County, Illinois.

7. Covenants to Run with Land. It is intended that these Declarations, Covenants and Restrictions, set forth herein shall run with the land until revoked or amended by all of the record owners of the Valley Shopping Center Re-Subdivision.

8. Term. This Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Kane County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, cancelled or terminated by all of the then record owners of the Valley Shopping Center Re-Subdivision.

Exhibit C (Continued)

IN WITNESS WHEREOF, the undersigned have affixed their signatures effective as of the date set forth above.

**PLANK ROAD, LLC**, an Illinois limited liability company

By: Mary Brown  
Mary Brown

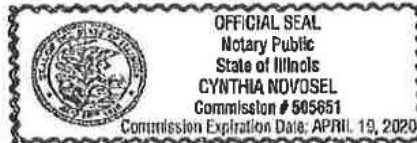
Its: Vice President/Manager

STATE OF ILLINOIS     )  
                                  ) ss.  
COUNTY OF COOK     )

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify, that the above-named, Mary Brown, Vice President/Manager of Plank Road, LLC, an Illinois limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President/Manager, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said Company for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 25 day of April, 2018.

Cynthia Novosel  
Notary Public



**EXHIBIT A**

**VALLEY SHOPPING CENTER RESUBDIVISION PLAT**

LOTS 1, 2, 3 AND 4 IN VALLEY SHOPPING CENTER RESUBDIVISION, BEING A RESUBDIVISION IN SECTIONS 18 AND 33, TOWNSHIP 40 NORTH, RANGE 8, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF ST. CHARLES, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 2018 AS DOCUMENT 2018K016459, IN KANE COUNTY, ILLINOIS.

**LOT 1:**

PIN: 09-33-126-024

ADDRESS: 1625 W. Main Street, St. Charles, IL 60174

**LOT 2:**

PIN: 09-33-126-025

ADDRESS: 1615 W. Main Street, St. Charles, IL 60174

**LOT 3:**

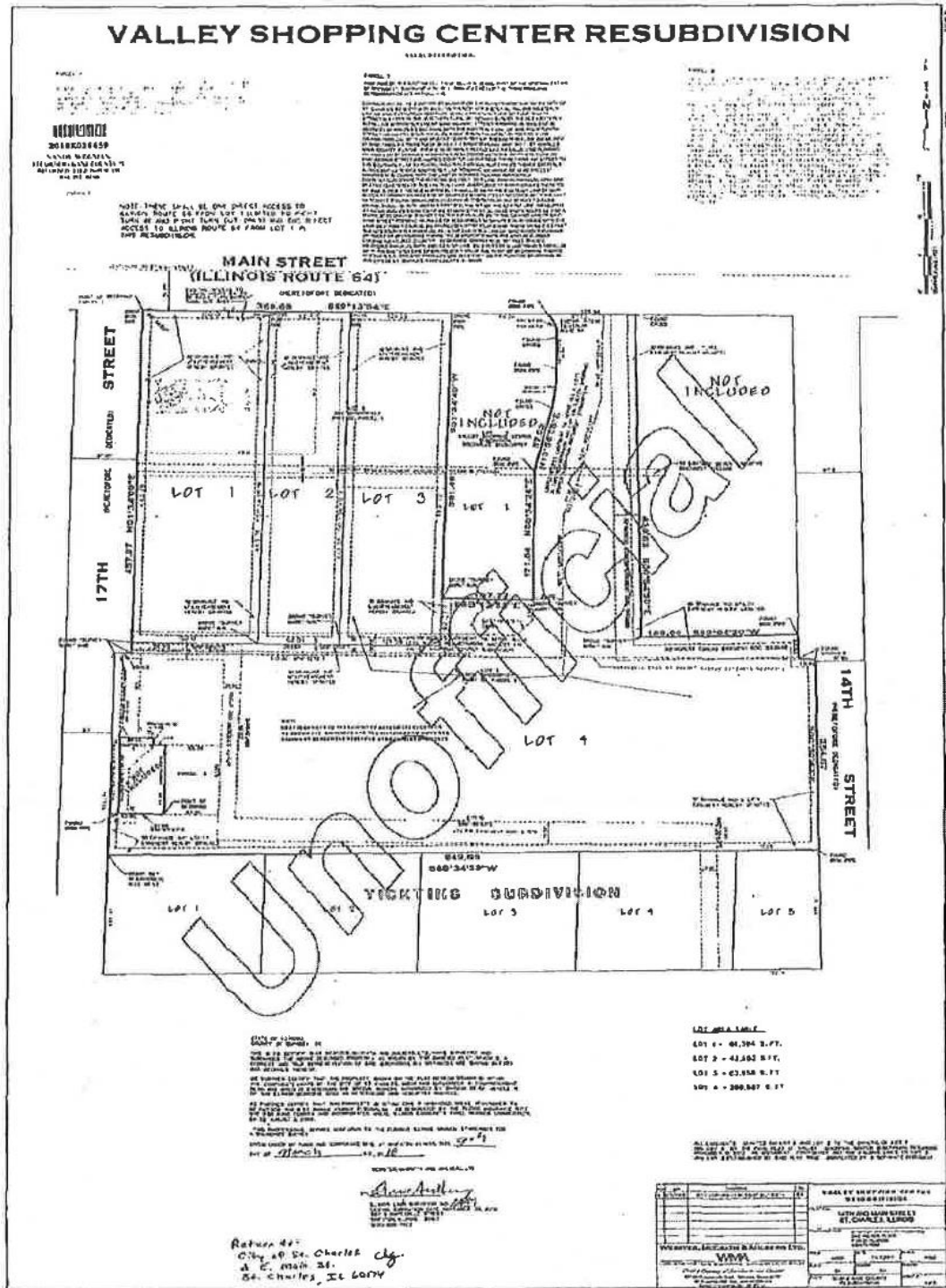
PIN: 09-33-126-026

ADDRESS: 1545 W. Main Street, St. Charles, IL 60174

**LOT 4:**

PINS: 09-33-126-028 and 09-33-126-028

ADDRESS: 1605 W. Main Street, St. Charles, IL 60174



# VALLEY SHOPPING CENTER RESUBDIVISION

**PLAT**  
 001-001-0000  
 001-001-0000  
 001-001-0000  
 001-001-0000  
 001-001-0000

**Section 1: General Information**

Project Name: **Valley Shopping Center**  
 Project Number: **001-001-0000**  
 Date: **001-001-0000**

**Section 2: Description of Project**

The project consists of the following:

- 1. **General Description:** The project is a shopping center located in the City of [City Name], State of [State Name]. It consists of [Number] lots, each containing [Number] square feet of land.
- 2. **Proposed Use:** The proposed use for the project is [Proposed Use].
- 3. **Proposed Development:** The proposed development is a [Proposed Development].

**Section 3: Survey Data**

The survey was conducted by [Surveyor Name] on [Date]. The survey shows the following:

- 1. **Lot Dimensions:** The lots are [Number] feet wide and [Number] feet deep.
- 2. **Lot Area:** The total lot area is [Number] square feet.
- 3. **Lot Numbering:** The lots are numbered [Number] through [Number].

**Section 4: Other Information**

The project is subject to the following:

- 1. **Local Ordinance:** The project is subject to the [Local Ordinance].
- 2. **State Law:** The project is subject to the [State Law].
- 3. **Federal Law:** The project is subject to the [Federal Law].

**Section 5: Signatures**

Signature of [Name]: \_\_\_\_\_  
 Signature of [Name]: \_\_\_\_\_  
 Signature of [Name]: \_\_\_\_\_

**Section 6: Notes**

[Notes]



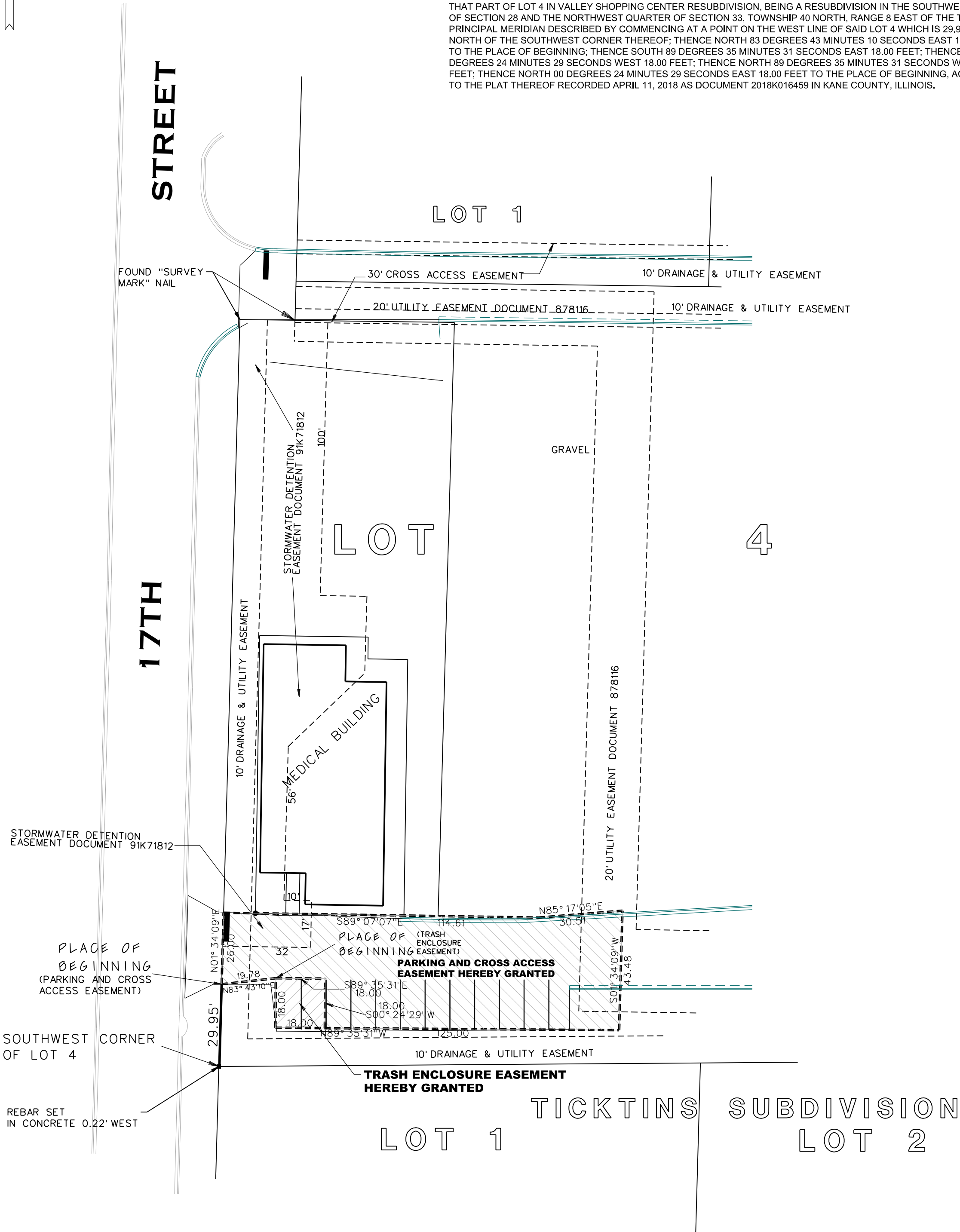




# EXHIBIT E

PARKING AND CROSS ACCESS EASEMENT:  
THAT PART OF LOT 4 IN VALLEY SHOPPING CENTER RESUBDIVISION, BEING A RESUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 28 AND THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY BEGINNING AT A POINT ON THE WEST LINE OF SAID LOT 4 WHICH IS 29.95 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 4; THENCE NORTH 01 DEGREES 34 MINUTES 09 SECONDS EAST ON THE WEST LINE OF LOT 4 26.00 FEET; THENCE SOUTH 89 DEGREES 07 MINUTES 07 SECONDS EAST 114.61 FEET; THENCE NORTH 85 DEGREES 17 MINUTES 05 SECONDS EAST 30.51 FEET; THENCE SOUTH 01 DEGREES 34 MINUTES 09 SECONDS WEST 43.48 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 31 SECONDS WEST 125.00 FEET; THENCE NORTH 00 DEGREES 24 MINUTES 29 SECONDS EAST 18.00 FEET; THENCE SOUTH 83 DEGREES 43 MINUTES 10 SECONDS WEST 19.78 FEET TO THE PLACE OF BEGINNING, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 2018 AS DOCUMENT 2018K016459 IN KANE COUNTY, ILLINOIS.

TRASH ENCLOSURE EASEMENT:  
THAT PART OF LOT 4 IN VALLEY SHOPPING CENTER RESUBDIVISION, BEING A RESUBDIVISION IN THE SOUTHWEST QUARTER OF SECTION 28 AND THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 40 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED BY COMMENCING AT A POINT ON THE WEST LINE OF SAID LOT 4 WHICH IS 29.95 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE NORTH 83 DEGREES 43 MINUTES 10 SECONDS EAST 19.78 FEET TO THE PLACE OF BEGINNING; THENCE SOUTH 89 DEGREES 35 MINUTES 31 SECONDS EAST 18.00 FEET; THENCE SOUTH 00 DEGREES 24 MINUTES 29 SECONDS WEST 18.00 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 31 SECONDS WEST 18.00 FEET; THENCE NORTH 00 DEGREES 24 MINUTES 29 SECONDS EAST 18.00 FEET TO THE PLACE OF BEGINNING, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 11, 2018 AS DOCUMENT 2018K016459 IN KANE COUNTY, ILLINOIS.



Rev	Date	Description	By	EXHIBIT E		
				LOCATION: LOT 4 in VALLEY SHOPPING CENTER RESUBDIVISION ST. CHARLES, ILLINOIS		
				PREPARED FOR: CITY OF ST. CHARLES		
	11/14/18	EXHIBIT E		JOB #:	44008	DATE: 9/11/2018
	10/19/18	CITY REVIEW		SURV:	GA	SCALE: 1"=30'
WEBSTER, McGRATH & AHLBERG LTD.				DESIGN:	GA	FILE #:
LAND SURVEYING - CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE						33-40-08 KANE CO.
Over a Century of Service to our Clients						SHEET #:
207 South Naperville Road Wheaton, Illinois 60187						1 of 1
ph: (630)668-7603 web: www.wmatld.com						
Design Firm License No. 184-003101						