

RESOLUTION NO. 18-16

**RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF
A UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE-NILES WATER COMMISSION AND UNIQUE INSURANCE COMPANY**

WHEREAS, in 2017, the Morton Grove-Niles Water Commission (“MGNWC” or “Commission”) was established by the Village of Morton Grove, a home rule Illinois municipal corporation (“Morton Grove”), and the Village of Niles, a home rule Illinois municipal corporation (“Niles”), by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) (“Division 135”). The establishing ordinances are Morton Grove Ordinance 17-5, which was adopted on March 13, 2017, and Niles Ordinance No. 2017-19, which was adopted on March 14, 2017. In order to accomplish the objectives set forth in the above-referenced Ordinances, Morton Grove and Niles also approved, under those same Ordinances, an intergovernmental agreement entitled, “Intergovernmental Agreement For The Establishment And Operation Of The Morton Grove-Niles Water Commission And For The Purchase And Sale Of Water To The Commission For Commission Use And To Commission Wholesale Water Customers” (the “IGA”), to provide for the governance and operation of the MGNWC and to create the Board of Commissioners of the Morton Grove-Niles Water Commission (“MGNWC Board”) to govern the MGNWC; and

WHEREAS, the MGNWC was established for purposes of constructing and operating a public water supply system (the “MGNWC System”) consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the “Project”); and

WHEREAS, UNIQUE INSURANCE COMPANY, AN ILLINOIS CORPORATION (“Property Owner”) is the fee simple owner of real estate commonly known as 7400 N. Caldwell Ave., Niles, Illinois. PIN: 10-30-406-016. The MGNWC and the Property Owner have negotiated a Utility Easement Agreement, a copy of which is attached hereto as Exhibit “A” and made a part hereof, for the purposes of granting certain temporary construction easement rights and permanent easement rights to allow the MGNWC to construct and operate a water distribution system. The temporary construction easement areas and permanent easement areas are legally described in the attached Utility Easement Agreement; and

WHEREAS, in consideration of the grant of the temporary construction easement rights and permanent easement rights under the Utility Easement Agreement by the Property Owner, the MGNWC agrees to pay to the Property Owner \$20,000.

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission has the authority to approve of and enter into the Utility Easement Agreement pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including 65 ILCS 5/11-135-1, *et seq.*), and find that entering into the Utility Easement Agreement is in the

best interests of the MGNWC and its members, the Village of Morton Grove and the Village of Niles.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MORTON GROVE-NILES WATER COMMISSION, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

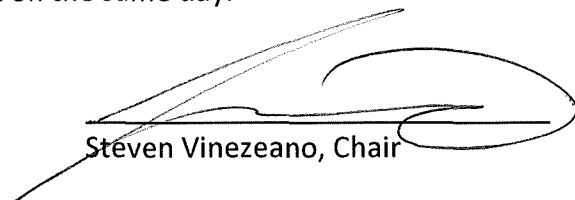
SECTION 2: The Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") authorizes the approval of an agreement entitled "Utility Easement Agreement" with UNIQUE INSURANCE COMPANY, AN ILLINOIS CORPORATION for the purposes set forth in the Utility Easement Agreement, attached hereto as **Exhibit A**. The MGNWC Board further authorizes and directs the Chair, the Clerk and the General Counsel, or their respective designees, to execute the final version of the Utility Easement Agreement, which may contain certain non-substantive modifications that are approved by the Village Manager of Niles and the Village Administrator of Morton Grove, and to execute and deliver all other instruments and documents and pay all costs and fees that are necessary to fulfill MGNWC's obligations under the Utility Easement Agreement.

SECTION 3: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

ADOPTED this 25th day of January 2018, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano
NAYS: None
ABSENT: None (Cook County Appointee not appointed yet)

PASSED by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 25th day of January 2018, and approved by the Chair, and attested by the Clerk on the same day.


Steven Vinezeano, Chair

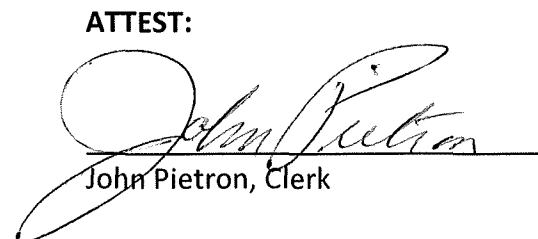
ATTEST:

John Pietron, Clerk

Exhibit "A"

**UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE NILES WATER COMMISSION AND UNIQUE INSURANCE COMPANY**

(attached)

Utility Easement Agreement

Property Address: 7400 Caldwell Ave.
Niles, Illinois
PIN: 10-30-406-016

This Agreement was prepared by and upon recording should be returned to:

Teresa Hoffman Liston
Corporation Counsel, Village of Morton Grove
6101 Capulina Avenue, Morton Grove, Illinois 60053
CCRD Box # _____

UTILITY EASEMENT AGREEMENT

This Utility Easement Agreement (“Agreement”) is entered into this ___ day of _____, 2017 between Unique Insurance Company, hereinafter referred to as “Property Owner,” the Village of Niles, hereinafter referred to as “Village,” and the Morton Grove Niles Water Commission, hereinafter referred to as “MGNWC,” collectively referred to herein as “Utility,” for the installation, placement, replacement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of “Utilities,” as further defined in this Agreement, within the “Easement Area,” defined in Recital A. below, pursuant to the terms and conditions set forth in this Agreement.

RECITALS

A. The Property Owner is the sole owner of industrial property commonly known as 7400 Caldwell Ave. (Parcel 1), Niles, Illinois and legally described as follows:

Parcel 1: That part of Lot 7 in Tam O’Shanter’s Industrial Park, being a subdivision in Section 30 and Jane Miranda’s Reservation in Township 41 North, Range 13, East of the Third Principal meridian, lying south of a line drawn at 90 degrees to the south extension of the west line of Lot 5 in said Tam O’Shanter’s Industrial Park, from a point 90.03 feet south of the southwest corner of said Lot 5; and lying east of the said south extension of the west line of Lot 5, in Cook County, Illinois. Property Index Numbers (PIN): 10-30-406-016.

This parcel is hereinafter referred to as the “Property Owner’s Property.”

The Utility proposes to install, place, replace, construct, reconstruct, maintain, rehabilitate, operate and/or repair underground utilities of any kind, including, but not limited to, a water transmission main and related water service lines, valves, meters, vaults, buffalo boxes, communication wires, cables and related conduit, fiber lines and related conduit, and any other related personal property, infrastructure and equipment (the “Utilities”) over, under, in, along, across and upon a portion of the Property Owner’s Property, legally described as follows:

**Permanent Easement Area 1: 7400 Caldwell Ave.
Affects PIN 10-30-406-016 (Parcel 1)**

The easterly 15 feet of that part of Lot 7 in Tam O’Shanter’s Industrial Park, being a subdivision in Section 30 and Jane Miranda’s Reservation in Township 41 North, Range 13, East of the Third Principal meridian, lying south of a line drawn at 90 degrees to the south extension of the west line of Lot 5 in said Tam O’Shanter’s Industrial Park, from a point 90.03 feet south of the southwest corner of said Lot 5; and lying east of the said south extension of the west line of Lot 5, in Cook County, Illinois, hereinafter referred to as “Permanent Easement Area

1.”

Permanent Easement Area 1 is depicted in Exhibit “B”.

Permanent Easement Area 1 shall be referred to as the “Easement Area”.

- B. The Property Owner agrees to grant to the Utility a permanent, perpetual, non-exclusive easement within the Permanent Easement Area for the installation, placement, replacement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of the Utilities pursuant to the terms of this Agreement, and the Utility, in consideration of the grant of said easement rights, agrees to make certain improvements on the Property Owner’s Property and/or pay to the Property Owner such other monetary compensation as further described in this Agreement.
- C. The Property Owner represents and warrants to the Utility, as a material inducement for the Utility entering into this Agreement, that the Property Owner has the full and unconditional authority to enter into this Agreement.

In consideration for the obligations and rights set forth in this Agreement, the Utility and the Property Owner agree as follows:

EASEMENT TERMS

1. Term.

- A. The term of the Permanent Easement within the Permanent Easement Area shall be perpetual, and shall commence on the date that the last signatory signs this Agreement, provided that all signatories execute this Agreement, and shall terminate only upon mutual written consent of the Parties or their successors and assigns.

2. Grant of Easements.

- A. Permanent Easement Area: The Property Owner, for him/herself/itself and his/her/its successors and assigns, conveys and grants to the Utility, its successors and assigns, a permanent, perpetual, non-exclusive easement over, under, in, along, across and upon the Permanent Easement Area of the Property Owner’s Property for the installation, placement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of the Utilities in the Permanent Easement Area. This Permanent Easement and other rights conferred to the Utility by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. In regard to the Permanent Easement Area and the permanent, perpetual, non-exclusive easement rights granted by the Property Owner to the Utility, the Parties further agree as follows:
 - a. All rights, title and interest in and to the Permanent Easement Area which may be used and enjoyed without interfering with the rights conveyed by this Agreement to the Utility are reserved to the Property Owner, provided, however, that the Property Owner shall not itself, or allow another to, install, place, construct, reconstruct, maintain, rehabilitate, operate and/or repair any structures, improvements or other encumbrances which cause or which in the Utility’s reasonable determination may cause, contribute or lead to damage to or interference with the Utilities placed or to be placed within the Permanent Easement Area; or develop, landscape or beautify any portion of the Permanent Easement Area in any way which would unreasonably or materially increase the costs to the Utility of installing, placing, constructing,

reconstructing, maintaining, rehabilitating, operating and/or repairing the Utilities. If any of the Utilities within the Permanent Easement Area or the Utility's other improvements or personal property are removed or damaged by the Property Owner or its officials, employees, agents and contractor(s) or other invitees or permittees of the Property Owner, the Property Owner, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such Utilities or other improvements or personal property to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.

- b. If the Property Owner's improvements within the Permanent Easement Area or elsewhere within the Property Owner's Property are removed or damaged by the Utility or its officials, employees, agents and contractor(s) or other invitees or permittees of the Utility in exercising its easement rights, the Utility, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such improvements to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.

B. Access to Easement Area: The Utility, and its officials, employees, agents and contractor(s) and any governmental or regulatory agency personnel with oversight authority of the Utility or the Utilities, shall be permitted to access and travel with their equipment upon and over the Property Owner's Property to access the Easement Area on an as-needed basis for purposes of installing, placing, constructing, reconstructing, maintaining, rehabilitating, operating and/or repairing the Utilities.

C. Obligations for Own Improvements: Each Party shall be responsible for maintaining, repairing and insuring its own improvements located within the Easement Area.

3. **Payment by the Utility.** On or before December 31, 2018, the Utility, at its sole expense and discretion, agrees to provide certain monetary compensation as fully described in **Exhibit "A"**, a copy which is attached hereto and made a part hereof. In the event the surface of the Easement Area is disturbed by the Utility's exercise of any of its easement rights under this Agreement, such area shall be restored to its original, existing condition immediately prior to the commencement of such activities. Except as specifically provided in this Agreement, the Utility shall have no obligation to improve, maintain, replace or repair the Property Owner's Property, and shall not be liable to the Property Owner or others for any claim arising out of the use or maintenance of the Easement Area or the Property Owner's Property. Except as specifically provided in this Agreement, the Utility shall have no other obligation to the Property Owner.

4. **Utility's Use of Easement Area.** The following general conditions shall apply to Utility's use of the Easement Area:

- A. The Utility, at its own expense, shall procure and maintain, prior to entry upon the Property Owner's Property, all licenses, consents, permits, authorizations and other approvals required from any federal, state, county or local governmental authority or any regulatory agency with oversight authority in connection with the installation, placement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of the Easement Area and the Utilities, and the Utility shall comply with all laws, rules, statutes and regulations of any governmental authorities having jurisdiction over the Easement Area, the Utilities or the Utility's operations. The Property Owner may, from time to time, request reasonable evidence that all such governmental or regulatory approvals have been obtained by the Utility and are in full force and effect. In no event shall the Utility seek any governmental or regulatory approvals that may affect in any way the Property Owner's operations, including without limitation any zoning approvals, without in each instance obtaining the Property Owner's prior written consent, which consent may be granted or withheld in the Property Owner's sole discretion.

- B. Except as specifically provided in this Agreement, the Utility's use of the Easement Area shall be conducted in a manner that does not conflict or interfere with the Property Owner's current operations.
- C. The Utility agrees to not cause or permit any lien (including, without limitation, any mechanic's lien) or claim for lien to be filed or asserted against the Easement Area or any interest therein, whether such lien or claim for lien results from or arises out of any act or omission of the Utility or its officials, employees, agents and contractor(s) or other invitees or permittees. In the event any such lien or claim for lien is issued or filed against title to the Property Owner's Property, the Utility will immediately remedy and obtain a release the lien or claim.
- D. The Utility agrees to cooperate with the Property Owner's reasonable efforts, if any, to cause the Permanent Easement Area, or any portion thereof, to be exempted from the payment of real estate taxes, to the extent that it is possible, under applicable law, including the execution and delivery of all documents, instruments, petitions and applications prepared by the Property Owner, at its cost, in this regard.

5. **Indemnification.** The Parties agree as follows:

- A. The Utility agrees to indemnify and hold harmless the Property Owner and its officials, employees, agents, volunteers, attorneys, contractor(s), invitees or permittees, successors and assigns (collectively the "Property Owner Affiliates") from and against all claims, demands, liabilities, losses, judgments, settlements, administrative / litigation costs and expenses (including reasonable attorney's fees) which may arise by reason of the Utility's use of the Property Owner's Property, or relating to the Utilities within the Easement Area except for those attributable to the Property Owner's or the Property Owner's Affiliates' accidental or intentional obstruction, damage or destruction of the Utilities, the negligence or improper act of the Property Owner or Property Owner's Affiliates, or the Property Owner's default or violation of this Agreement. Any entry onto the Property Owner's property by the Utility, or its appointed or elected officials, employees, agents, volunteers, attorneys, contractor(s), invitees, permittees, successors and assigns shall be at such person's sole risk, and the Property Owner makes no representations or warranties of any kind whatsoever regarding the Property Owner's Property or the condition of the Property Owner's Property (including, without limitation, the environmental condition thereof).
- B. The Property Owner agrees to indemnify and hold harmless the Utility and its elected and appointed officials, employees, agents, volunteers, attorneys, contractor(s), invitees, permittees, successors and assigns (collectively the "Utility Affiliates") from and against all claims, demands, liabilities, losses, judgments, settlements, administrative / litigation costs and expenses (including reasonable attorney's fees) which may arise by reason of the Property Owner's use of the Easement Area, or relating to the Utilities within the Easement Area except for those attributable to the Utility's or the Utility Affiliates' accidental or intentional obstruction, damage or destruction of the Utilities, the negligence or improper act of the Utility or the Utility Affiliates, or the Utility's default or violation of this Agreement.

6. **Insurance.** The Property Owner and the Utility each agree to procure and maintain and to require their contractors, before commencing any work within the Easement Area or within the Property Owner's Property, to purchase and maintain a policy or policies of insurance, as follows:

- A. Commercial General Liability (CGL) covering all contractors, subcontractors and all their subcontractors, with limits not less than Two Million Dollars (\$2,000,000.00) per occurrence covering liability for bodily injury and property. The Property Owner and Property Owner Affiliates shall be added as Additional

Insureds on the Utility's CGL policy, and the Utility and the Utility Affiliates shall be added as Additional Insureds on the Property Owner's CGL policy.

B. Automobile Liability in an amount of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage, covering all owned, leased, rented or non-owned vehicles, which shall include automobile contractual liability coverage.

C. Workers' Compensation Insurance with Illinois statutory limits.

7. **Assignment.** This Agreement, and the rights and obligations of the Parties set forth in this Agreement, shall be binding upon and inure to the benefit of the Parties and their respective successors, personal representatives and assigns, and the owners of the Property Owner's Property, from time to time; provided, however, that the Utility may assign all or any portion of its right, title, interest or obligation in this Agreement to the Village of Morton Grove, the Village of Niles, the Morton Grove-Niles Water Commission, or its successor entity, or to any municipal joint action water agency.

8. **Entire Agreement.** The terms, exhibits and addenda, if any, herein contain the entire agreement between the Property Owner and the Utility regarding the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the Parties pertaining to such subject matter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signatory below, which date shall be inserted on page 1 of this Agreement.

Unique Insurance Company

By: _____
Its _____

Dated: _____

Village of Niles

By _____
Steven C. Vinezeano
Village Manager

Dated: _____

Morton Grove-Niles Water Commission

By: _____
Steven C. Vinezeano, its Chairperson

Dated: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CERTIFICATION

I, the undersigned, a Notary Public, in and for the County and State aforesaid, CERTIFIES that the above-named _____, personally known to me to be the _____ of Unique Insurance Company, and also known to me to be the same person whose name is subscribed to the foregoing Agreement as such _____, appeared before me this day in person and severally acknowledged that, as such _____, he/she signed and delivered the signed Agreement, pursuant to authority given Unique Insurance Company, as his/her free and voluntary act, and as the free and voluntary act and deed of Unique Insurance Company, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this ____ day of _____, 2017.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CERTIFICATION

I, the undersigned, a Notary Public, in and for the County and State aforesaid, CERTIFIES that the above-named Steven C. Vinezeano, personally known to me to be the Chairperson of the Morton Grove-Niles Water Commission, and also known to me to be the same person whose name is subscribed to the foregoing Agreement as such Chairperson, appeared before me this day in person and severally acknowledged that, as such Chairperson, he signed and delivered the signed Agreement, pursuant to authority given by the Morton Grove-Niles Water Commission, as his free and voluntary act, and as the free and voluntary act and deed of the Morton Grove-Niles Water Commission, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this _____ day of _____, 2017.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CERTIFICATION

I, the undersigned, a Notary Public, in and for the County and State aforesaid, CERTIFIES that the above-named Steven C. Vinezeano, personally known to me to be the Village Manager of the Village of Niles, and also known to me to be the same person whose name is subscribed to the foregoing Agreement as such Village Manager, appeared before me this day in person and severally acknowledged that, as such Village Manager, he signed and delivered the signed Agreement, pursuant to authority given by the Village of Niles, as his free and voluntary act, and as the free and voluntary act and deed of the Village of Niles, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal, this _____ day of _____, 2017.

Notary Public

EXHIBIT "A"

**Payment to the Property Owner
Unique Insurance Company
7400 Caldwell Ave. Niles, Illinois
PINS: 10-30-406-016**

Compensation payable by the Utility to the Property Owner in an amount equal to \$20,000 on or before December 31, 2018.

EXHIBIT "B"

**Exhibit of Permanent Easement Area 1
PIN: 10-30-406-016**

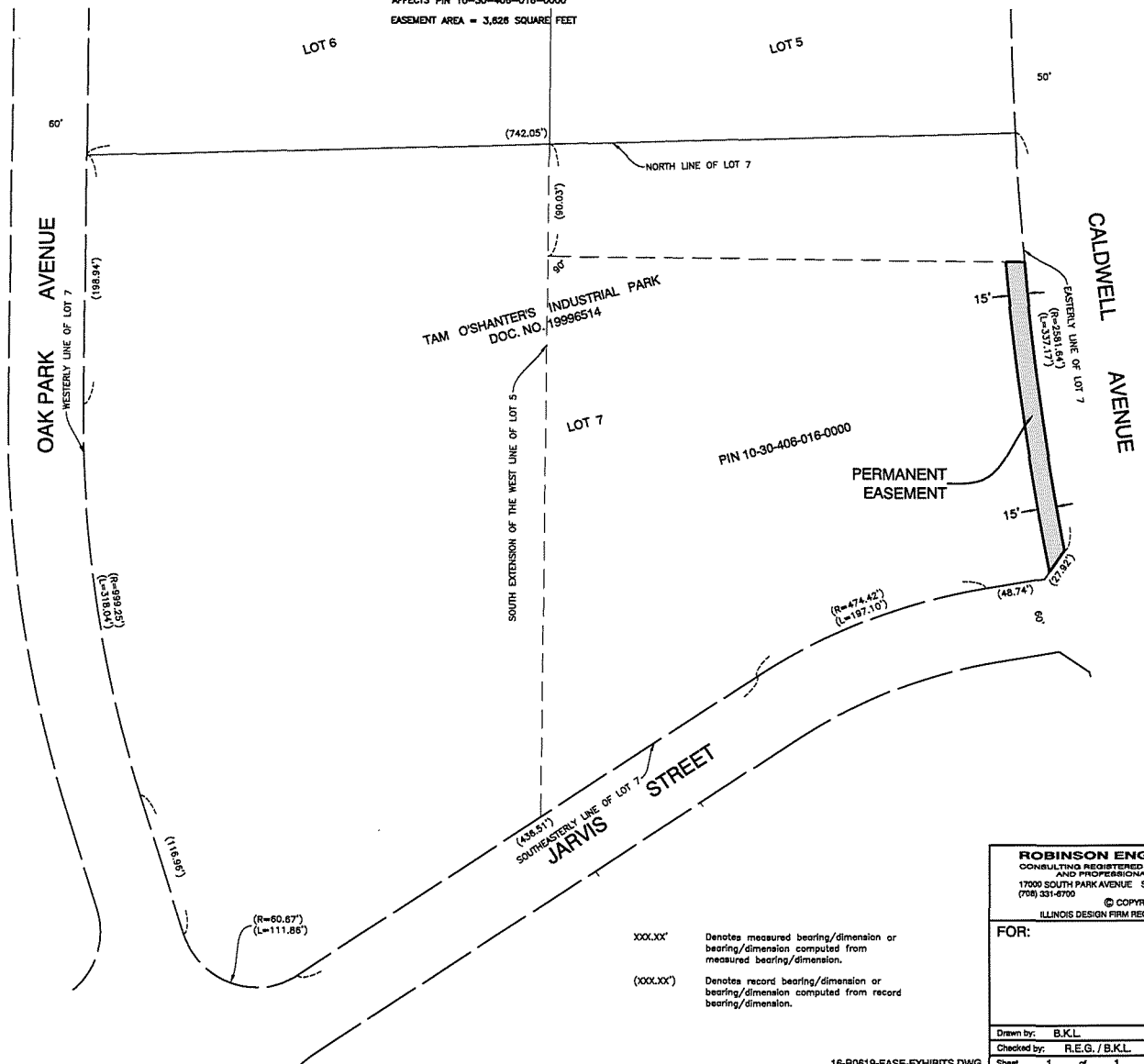
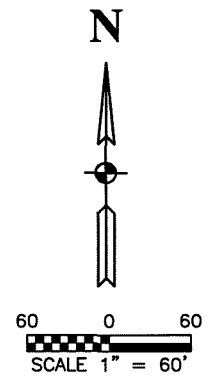
EXHIBIT

of

PERMANENT EASEMENT

THE EASTERLY 15 FEET OF THAT PART OF LOT 7 IN TAM O'SHANTER'S INDUSTRIAL PARK, BEING A SUBDIVISION IN SECTION 30 AND JANE MIRANDA'S RESERVATION IN TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF A LINE DRAWN AT 90 DEGREES TO THE SOUTH EXTENSION OF THE WEST LINE OF LOT 5 IN SAID TAM O'SHANTER'S INDUSTRIAL PARK, FROM A POINT 90.03 FEET SOUTH OF THE SOUTHWEST CORNER OF SAID LOT 5 AND LYING EAST OF THE SAID SOUTH EXTENSION OF THE WEST LINE OF LOT 5, IN COOK COUNTY, ILLINOIS.

AFFECTS PIN 10-30-408-016-0000
EASEMENT AREA = 3,828 SQUARE FEET



XXX.XX' Denotes measured bearing/dimension or bearing/dimension computed from measured bearing/dimension.
(XXX.XX') Denotes record bearing/dimension or bearing/dimension computed from record bearing/dimension.

17-R0442

ROBINSON ENGINEERING, LTD. CONSULTING REGISTERED PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS 17000 SOUTH PARK AVENUE SOUTH HOLLAND, ILLINOIS 60473 (708) 331-8700 © COPYRIGHT 2017 FAX (708) 331-3828 ILLINOIS DESIGN FIRM REGISTRATION NO. 184001128		REVISIONS		
		No.	Date	Remarks
FOR:		1	8-5-17	REVISED PER DESIGN CHANGE
		2	9-12-17	EASEMENT AREA ADDED
Drawn by:	B.K.L.	Date:	8-31-17	
Checked by:	R.E.G. / B.K.L.	Scale:	1" = 60'	
Sheet	1	of	1	
Project No.	17-R0442			

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK’S CERTIFICATE

I, John Pietron, Clerk of the Morton Grove-Niles Water Commission, Cook County, State of Illinois, certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my office, entitled:

RESOLUTION NO. 18-16
RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF
A UTILITY EASEMENT AGREEMENT BETWEEN
THE MORTON GROVE-NILES WATER COMMISSION AND UNIQUE INSURANCE COMPANY

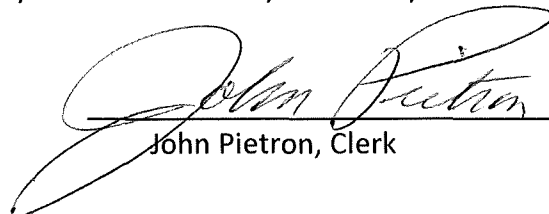
which Resolution was passed by the Board of Commissioners of the Morton Grove-Niles Water Commission at a Regular Meeting held on the 25th day of January, 2018, at which meeting a quorum was present.

I further certify that the vote on the question of the passage of said Resolution by the Board of Commissioners of the Morton Grove-Niles Water Commission was taken by Ayes and Nays and recorded in the minutes of the Board of Commissioners of the Morton Grove-Niles Water Commission, and that the result of said vote was as follows, to-wit:

- AYES:** John Pietron and Steven Vinezeano
- NAYS:** None
- ABSENT:** None (Cook County Appointee not appointed yet)

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of January 2018.


John Pietron, Clerk