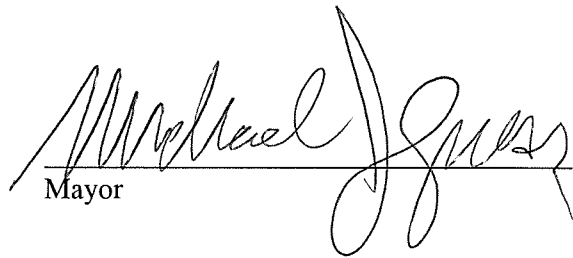


**RESOLUTION R-22-11**

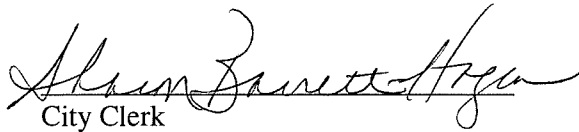
**RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(321 E. Cole Avenue)**

**BE IT AND IT IS HEREBY RESOLVED** by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated April 5, 2011, between the City of Wheaton and David and Alice Banks of 321 E. Cole Avenue, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

**ADOPTED** this 2<sup>nd</sup> day of May, 2011.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

ROLL CALL VOTE

Ayes:	Councilman Sues Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

Egk R.22-11  
2011 Pu 13 0419  
633

APR 11 2011

Lawn Irrigation System

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (321 E. Cole Ave )**  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5 day of APRIL, 2011, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and DAVID BANKS & ALICE BANKS ("Owner").

WITNESSETH

WHEREAS, the City is in possession of a right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, DAVID BANKS (hereinafter "Owner"), the owner of the premises located at 321 E COLE AVE, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the right-of-way; and

WHEREAS, the Owners would like to use a portion of the City's right-of-way for the purpose of constructing and maintaining a lawn irrigation system; and

WHEREAS, the Owners acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said right-of-way.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Owner as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

ALICE & DAVID BANKS are the owners of property located at 321 E COLE AVE Wheaton, Illinois, legally described on Exhibit A attached hereto and made a part hereof.

3.) The Owners, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, are hereby authorized to use a portion of the right-of-way more specifically identified as that portion of the right-of-way 321 E COLE AVE

\_\_\_\_\_ for construction of and use of a lawn irrigation system as depicted on Exhibit B attached hereto and made a part hereof. The installation and use of the lawn irrigation system shall conform to all applicable ordinances of the City. Those ordinances are material terms and conditions of this Agreement.

4.) The City retains the right to enter said right-of-way for any purpose to perform any work including but not limited to constructing and maintaining the City utility systems (watermain, storm and sanitary sewers) and other infrastructure. If the City performs any work within said right-of-way which causes damage to the lawn irrigation system, the Owners shall be responsible to repair the lawn irrigation system at their sole cost and expense. The Owner hereby acknowledges and agrees that City its, employees and agents shall have no liability to the Owner for any damage, removal or other casualty to the lawn irrigation system caused by the City, its employees or agent regardless of the cause.

5.) The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Owners in writing at least fourteen (14) days prior to termination.

6.) Upon termination of this Agreement, the City may destroy, demolish, or remove any improvements placed upon the right-of-way by the Owners without liability.

7.) To the greatest extent permitted under Illinois law, Owners shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and expert's fees) which arise or may be caused by the negligence of the Owners, or Owners' agents, as a result of the design, construction, maintenance, use or abandonment of the lawn irrigation system described herein.

8.) This Agreement is not an easement. Should a court of competent jurisdiction construe it as an easement it shall be a temporary easement which shall expire 14 days after such construction.

9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their sucesors, heirs and assigns.

IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

*[Handwritten Signature]*

Owner

*[Handwritten Signature]*

Owner

Subscribed and sworn to before me this 5 day of April, 2011.

OFFICIAL SEAL  
MARIE WESEMAN  
NOTARY PUBLIC  
STATE OF ILLINOIS

*[Handwritten Signature]* Notary Public

(Notary Seal)

*[Handwritten Signature]*

Mayor, City of Wheaton

Attested by:

*[Handwritten Signature]*  
City Clerk

**EXHIBIT A**

Legal Description:

Lot 24 (except the west 10 feet thereof) in Durable Construction Company's Northside Addition to Wheaton, being a subdivision of Lots 10, 11 and 12 in Block 3 in Arthur T. McIntoch and Company's Geneva Road Subdivision in the northwest quarter of Section 9, Township 39, Range 10 East of the Third Principal Meridian, according to the plat of said Durable Construction Company's Northside Addition to Wheaton, recorded October 5, 1956 as document 818928 and Certificate of Correction filed February 15, 1957 as document 904473, in DuPage County, Illinois.

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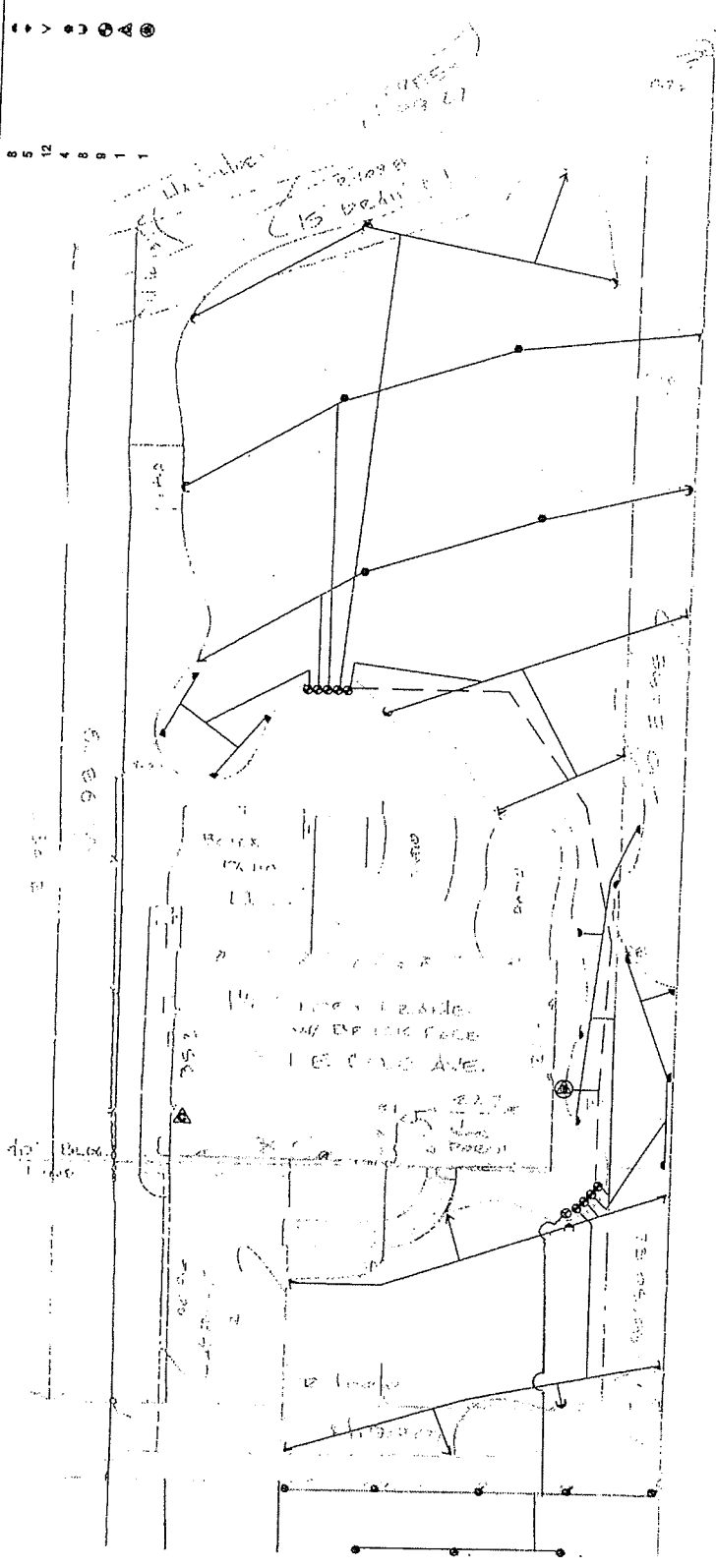
321 E. Cole Avenue, Wheaton, IL 60187  
address

P.I.N. 05-09-104-014

Lot 74 (except the West 10 feet portion) in Durable Construction Company's Northside Addition to Wheaton, being a subdivision of Lots 10, 11 and 12 in Block 10, North 1st Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat said Durable Construction Company's Northside Addition to Wheaton, recorded October 5, 1968 as Document 818928 and Certificate of Correction filed February 15, 1969 as Document 8973, in DuPage County, Illinois.

# EXHIBIT "B"

Qty	Symbol	Description
8	●	Hunter PS 180 - Mist
5	▼	Hunter PS 90 - Mist
12	●	Hunter PGP 90 - Rotor
4	●	Hunter PGP 360 - Rotor
8	●	Hunter PGP 180 - Rotor
9	▲	Hunter PGP Valve
1	⊗	Hunter Pro-C
1	⊙	Wetline Backflow



**Western Irrigation, Inc.**  
 26 W 307 ST. Charles Road  
 Carol Stream, Illinois 60188  
 (630) 653-3937  
 Fax (630) 653-3947  
 westernirrigationinc.com

PROJECT:  
**Banks**  
**321 E. Cole Ave**  
**Wheaton**

Date: 3/29/11

Sheet Description:  
 Irrigation Design  
 SCALE 1" = 30'