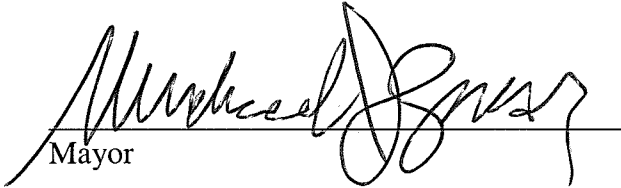


RESOLUTION R-48-12

**RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(521 North Ellis 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 June 28, 2012, between the City of Wheaton and Barbara Lynn Hoene Haley and J. Matthew Haley of 521 North Ellis Avenue, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 16th day of July, 2012.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote:

Councilman Scalzo

Councilman Sues

Councilwoman Ives

Mayor Pro Tem Mouhelis

Councilman Rutledge

Councilwoman Pacino Sanguinetti

Nays:

None

Absent:

Mayor Gresk

Motion Carried Unanimously

C

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CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (521 N ELLIS AVE)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 28 day of June, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Barbara Lynn Hoene ("Owner").

Hoene + J. Matthew Hoey
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

Barbara Lynn Hoene Hoey
WHEREAS, J. Matthew Hoey preinafter "Owner"), the owner of the premises located at 521 N. ELLIS, 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.

Barbara Lynn Hoene Hoey
2.) J. Matthew Hoey are the owners of property located at 521 N ELLIS 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 PARKWAY of Ellis Av and Lincoln Av adjacent to 521 N. ELLIS Av.

_____ 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.

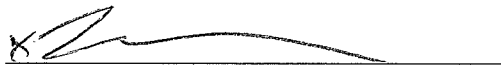
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within 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.

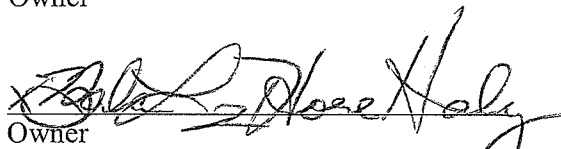
10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

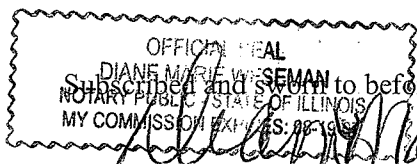
11.) The Owners obligations under this Agreement shall be joint and several.


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.

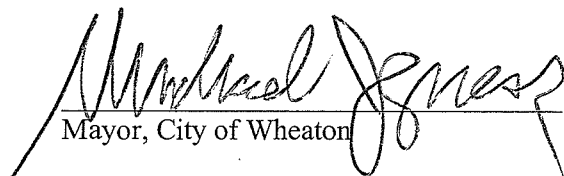

Owner


Owner



Subscribed and sworn to before me this 28th day of June, 20 12

Notary Public

(Notary Seal)


Mayor, City of Wheaton

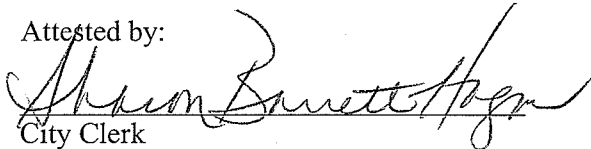
Attested by:

City Clerk

EXHIBIT A

Legal Description:

LEGAL DESCRIPTION

LOT 8 AND THE NORTH 25 FEET OF LOT 7 IN BLOCK 9 IN NOAH E. GARY'S FIRST ADDITION TO WHEATON, IN THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

521 N. Ellis Ave Wheaton, IL 60187
address

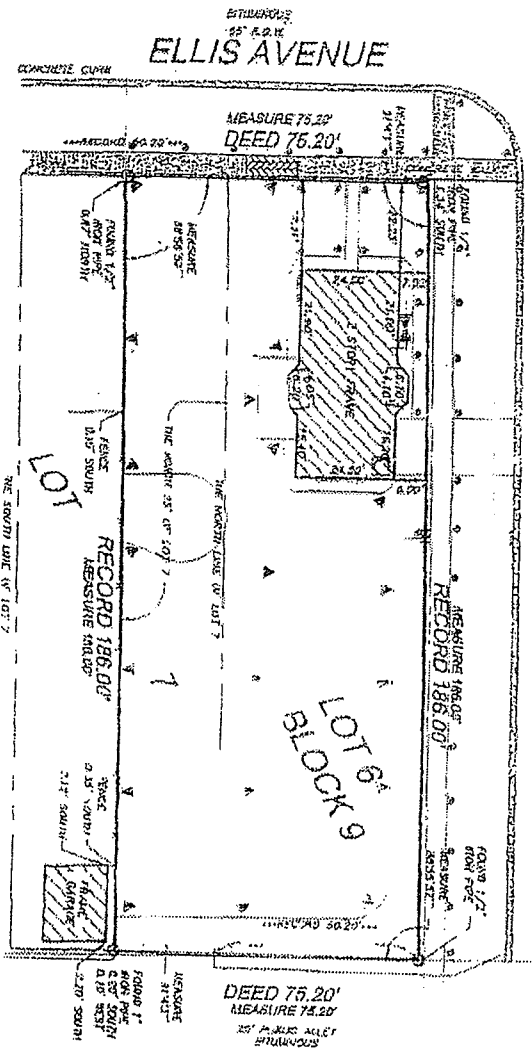
P.I.N. X05-17-221-001

EXHIBIT A

WORKMAN
LAND SURVEYORS
 73 W. 61ST STREET WESTMONT, IL 60089
 PHONE 630-441-0176 FAX 630-441-0177



LEGAL DESCRIPTION
 LOT 8 AND THE NORTH 25 FEET OF LOT 7 IN BLOCK 9 IN NORTH E. GARY'S FIRST ADDITION TO WHEATON, IN THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 30 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.



GENERAL NOTES

(UNLESS OTHERWISE NOTED ALL DIMENSIONS ARE IN FEET AND INCHES AND THIS ARE TO SURVEY AND NOT TO CONSTRUCTION)

THE LOCATION OF THE PROPERTY LINES SHOWN ON THE FACE OF THIS SURVEY PLAT IS UPON THE DISCREPANCY AND RECONCILED BY SURVEYING AT THE CLERK'S OFFICE WITH THE BEST AVAILABLE. THE ANGLES SHOWN ON THIS SURVEY PLAT ARE NOT TO BE CONSIDERED AS NOT REFLECTING THE TRUE ANGLES, THE CORRECTIONS, AND THE TRUE VALUES FOR THE SURVEY.

ALL DIMENSIONS AND MEASUREMENTS SHOWN ON THIS SURVEY PLAT ARE TO BE CONSIDERED AS APPROXIMATE AND NOT TO BE USED AS A BASIS FOR ANY OTHER SURVEY OR AS A BASIS FOR ANY OTHER PURPOSE.

DATE OF COMPLETION OF FIELD WORK: DECEMBER 4, 2005

CLIENT: MILLER & WINTHROP

ADDRESS: 321 ELLIS AVENUE
 WHEATON, ILLINOIS

JOB NO.: 05-27193



STATE OF ILLINOIS }
 COUNTY OF DUPAGE } SS

I, **MILLER & WINTHROP**, AN ILLINOIS PROFESSIONAL LAND SURVEYOR DO HEREBY CERTIFY THAT THIS PLAT HEREON DRAWN WAS PREPARED BY AND UNDER MY DIRECTION. ALL DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF. THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS SURVEYING STANDARDS FOR A BOUNDARY SURVEY. GIVEN UNDER MY HAND AND SEAL THIS 12TH DAY OF DECEMBER A.D., 2005.

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 028-000501
 MY LICENSE EXPIRES ON NOVEMBER 30, 2008.

