

RESOLUTION R-35-13

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(331 Brookside Circle)**

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 May 1, 2013 between the City of Wheaton and James and Kimberly Johnsen of 331 Brookside Circle, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 20th day of May, 2013.



Mayor

ATTEST:



City Clerk

Roll Call Vote

Ayes:	Councilman Sues Councilman Prendiville Councilman Rutledge Councilman Saline Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Brookside Cir)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 1st day of May, 2013, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Kimberly Johnson + James ("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, Kimberly Johnson + James (hereinafter "Owner"), the owner of the premises located at 331 Brookside Cir, 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.

2.) Kimberly Johnson + James are the owners of property located at 331 Brookside Cir, 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 AT 331 Brookside Cir
Wheaton IL

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 successors, 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.

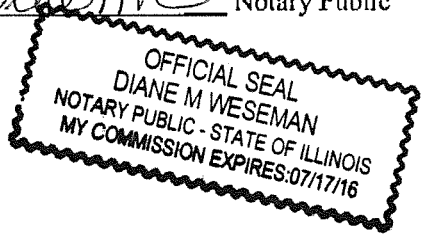
X [Signature]
Owner

X [Signature]
Owner

Subscribed and sworn to before me this 15th day of May, 2013.

[Signature] Notary Public

(Notary Seal)



[Signature]
Mayor, City of Wheaton

Attested by:
[Signature]
City Clerk

EXHIBIT A

Legal Description:

PLAT OF SURVEY

OF LOT 19 IN DURABLE CONSTRUCTION COMPANY'S NORTHSIDE ADDITION TO WHEATON, BEING A SUBDIVISION OF LOTS 10, 11 AND 12 IN BLOCK 3, IN ARTHUR T. MCINTOSH AND COMPANY'S GENEVA ROAD SUBDIVISION, IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, 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 13, 1957 AS DOCUMENT 832473, IN DUPAGE COUNTY, ILLINOIS.

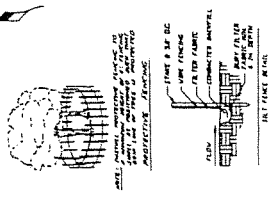
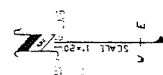
331 Brookside CR Wheaton, IL 60187
address

P.I.N. ~~X~~ 05-09-104-005

EXHIBIT A

PLAT OF SURVEY
TOPOGRAPHY & SITE PLAN FOR PROPOSED POOL

OF LOT 19 IN QUADRALE, EASTERN SUBDIVISION, BUREAU OF SURVEYOR OF LOTS 10, 11 AND 12 IN BLOCK 3, IN AREA 1, MONROE AND COMPANY'S AREA ROAD SUBDIVISION, IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 19 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, BUREAU OF SURVEYOR OF LOTS 18, 19 AND 20 IN BLOCK 3, IN AREA 1, MONROE AND COMPANY'S AREA ROAD SUBDIVISION, OCTOBER 5, 1946 AS DOCUMENTED BY SURVEY AND CERTIFICATE OF CORRECTION FILED FEBRUARY 13, 1957 AS DOCUMENT 012273, IN BURAGE COUNTY, ILLINOIS.



APPROVED
MAR 29, 2006
BY: [Signature]

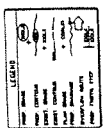
THE PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A SURVEYOR SURVEY



SURVEYOR'S CERTIFICATE
I, JAMES J. LAMBERT, A LICENSED LAND SURVEYOR, HAVE MADE A CAREFUL AND THOROUGH REVISION OF THE SURVEY HEREON SHOWN BY ME AND THE SAME IS CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

331 SMOUSH SIDE CIRCLE
P. N. # 05-09-104-005

[Handwritten signature]

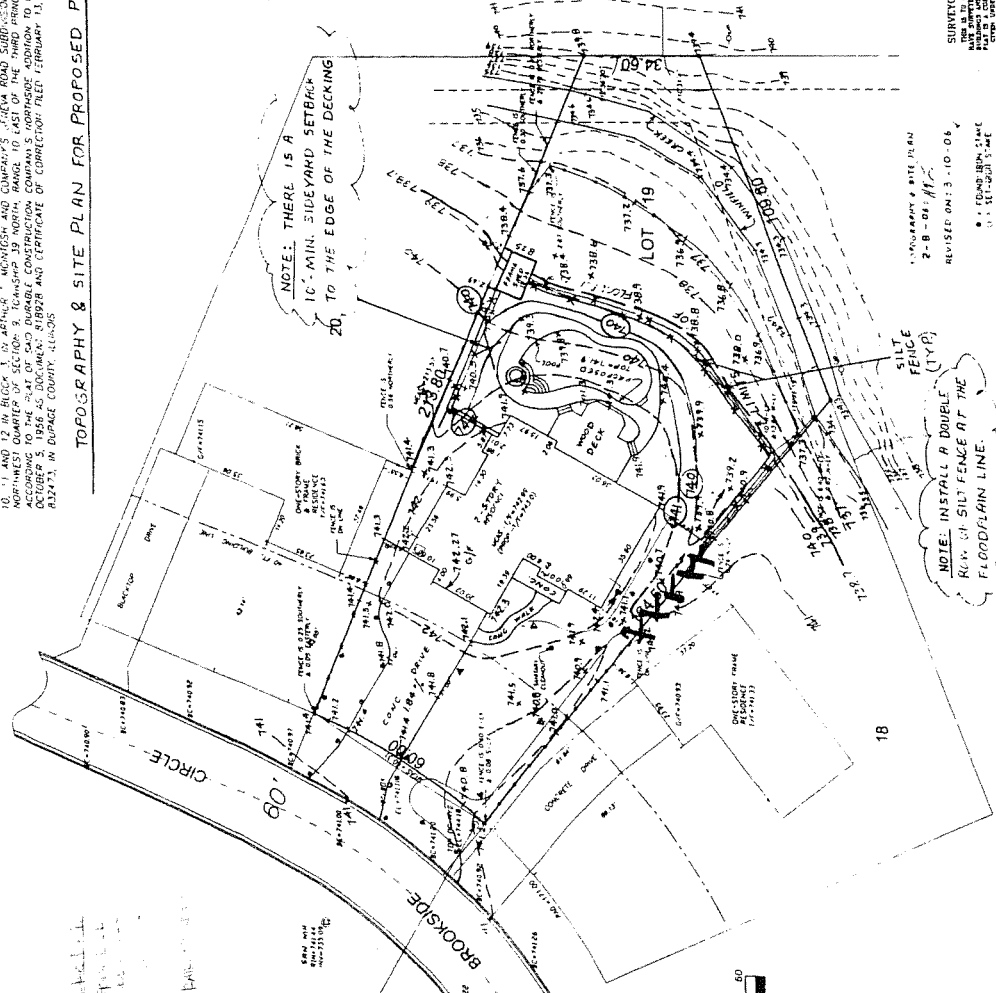


NOTE: NO STORAGE OF MATERIALS IS ALLOWED WITHIN THE DESIGNATED FLOOD HAZARD AREA.

THIS IS TO CERTIFY THAT THE PROPOSED IMPROVEMENTS WERE MADE IN ACCORDANCE WITH THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A SURVEYOR SURVEY AND THAT THE SURVEYOR HAS MADE A CAREFUL AND THOROUGH REVISION OF THE SURVEY HEREON SHOWN BY ME AND THE SAME IS CORRECT AND TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.



FINAL IMPROVEMENTS LINES & FINAL TOPOGRAPHY PREPARED
B-20-043/11



PROPOSED POOL SITE PLAN
2-B-05-11
REVISION ON: 3-10-06

NOTE: INSTALL A DOUBLE ROW OF SILT FENCE AT THE FLOODPLAIN LINE.

DESIGNED BY:
JAMES J. LAMBERT
131 N. 21st St. E.
MUSKEGON, IN 46541
TEL: 765/377-1111

DESIGNED BY:
JAMES J. LAMBERT
131 N. 21st St. E.
MUSKEGON, IN 46541
TEL: 765/377-1111

DATE: 3/29/06

