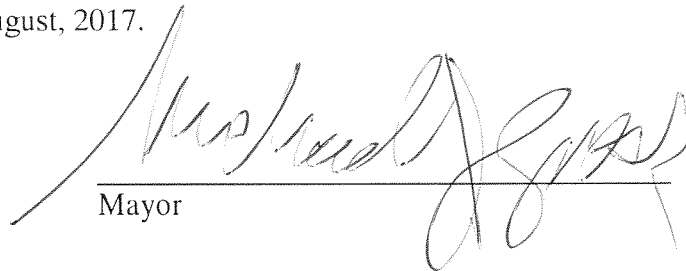


RESOLUTION R-71-17

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(336 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 hereby authorized to sign and the City Clerk is directed to attest to the Construction, Use and Indemnification Agreement dated July 6, 2017, between the City of Wheaton and Darrell and Cheryl Holmes of 336 Brookside Circle, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 7th day of August, 2017.



Mayor

ATTEST:



City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Sues
	Councilman Barbier
	Councilwoman Fitch
	Councilman Prendiville
	Mayor Gresk
	Councilman Rutledge
	Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

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

RECEIVED

JUL - 7 2017

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 6TH day of JULY, 2017, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Darrell & Cheryl Holmes ("Owner").

BUILDING CODE ENFORCEMENT

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, Darrell & Cheryl Holmes (hereinafter "Owner"), the owner of the premises located at 336 Brookside CR, 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.) Darrell & Cheryl Holmes are the owners of property located at 336 Brookside CR, 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 Brookside Circle adjacent to 336 Brookside Circle

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 supersede 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 any 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 cost of the Owner.

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.

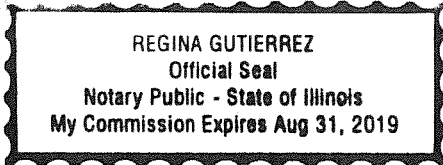
Donell H Holmes
Owner

Cheryl Holmes
Owner

Subscribed and sworn to before me this 6 day of July, 2017.

Regina Gutierrez Notary Public

(Notary Seal)



[Signature]
Mayor, City of Wheaton

[Signature]
City Clerk

EXHIBIT A

Legal Description:

— LOT 14 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
— AS CORRECTED BY CERTIFICATE RECORDED FEBRUARY 13, 1957 AS
— DOCUMENT 832473, IN DU PAGE COUNTY, ILLINOIS.

336 Brookside CR Wheaton, IL 60137
address

P.I.N. 0509103003

PLAT OF SURVEY

THE SEVERAL LOTS COMPOSED BY THIS SURVEY WERE FIRST DIVIDED INTO SEVERAL LOTS BY DEED OF DONATION IN 1867. THE LOTS WERE RE-DIVIDED INTO THE PRESENT LOTS BY DEED OF DONATION IN 1870. THE SURVEY IS A RE-DIVISION OF THE SURVEY FIRST MADE BY SAID DEED OF DONATION IN 1870. THE SURVEY IS A RE-DIVISION OF THE SURVEY FIRST MADE BY SAID DEED OF DONATION IN 1870. THE SURVEY IS A RE-DIVISION OF THE SURVEY FIRST MADE BY SAID DEED OF DONATION IN 1870.

SURVYOR'S CERTIFICATE

I, the undersigned, a duly licensed Surveyor in the State of Iowa, have made a careful examination of the above described plat of survey, and find that it is correct in all particulars, and that the same conforms to the provisions of the laws of the State of Iowa in relation to surveys.

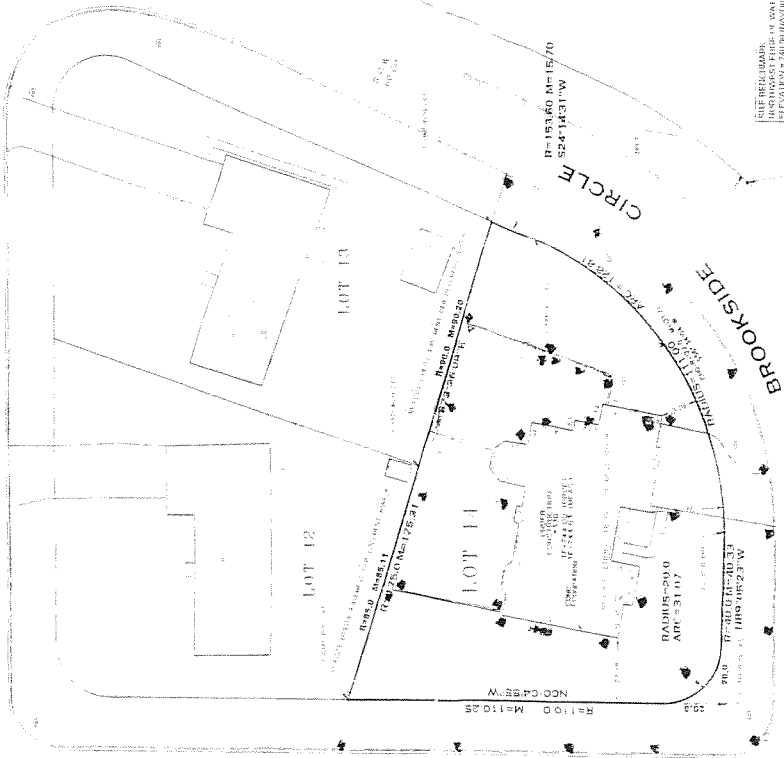
Witness my hand and seal this 15th day of May, 1915.

M. New

Notary Public in and for the State of Iowa

Joseph C. Wick
3514

- PERMITS Etc
- STAPLES
- ▼ STAPLES
- ~ 1/2" GAUGE
- ETC ETC



SEE REVISIONS
BEHIND THIS FILE IN WHITE ENVELOPE

ABBREVIATIONS

ADJ. - HIGHWAY FRONTIER ETC
 DC - DISTRICT CORNER
 ETC - ETC
 F - FENCE
 G - GRAVEL
 H - HIGHWAY
 I - IRON
 L - LUMBER
 M - MASONRY
 N - NAIL
 O - OAK
 P - PINE
 S - SANDSTONE
 SH - SHALE
 SL - SLATE
 ST - STEEL
 T - TRUSS
 W - WOOD
 WT - WEIGHT
 Y - YARD

LEGEND	
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RECEIVED

BY _____

PLAT OF SURVEY

PLAT OF SURVEY	
PROPERTY OF	
TOWN OF WHEATON IOWA	
SECTION	
RANGE	
TOWNSHIP	
COUNTY	
STATE OF IOWA	
DATE OF SURVEY	
BY	
IN PRESENCE OF	
SUBSCRIBED AND SWORN TO before me this _____ day of _____ 1915	
My commission expires _____	
Notary Public in and for the State of Iowa	

SURVEY BENCHMARK

ON PAGE COUNTY BENCHMARK NO. 10788, P. 107, BEING
 BEARING IN THE COURSE OF SURVEY TO BENCHMARK
 9117.1 AND 9117.2 WAS FOUND 60 FT. EAST OF THE
 SURVEY BENCHMARK AND 30 FT. WEST OF BENCHMARK
 9117.1. ELEVATION - 275.48 HIGHER

