

**RESOLUTION R-2018-52**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(610 North Gary Avenue)**

**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 April 25, 2018, between the City of Wheaton and John J. and Nancy M. Williams of 610 North Gary Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 18<sup>th</sup> day of June 2018.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Ayes:           Roll Call Vote  
                    Councilman Rutledge  
                    Councilman Scalzo  
                    Councilman Sues  
                    Councilman Barbier  
                    Councilwoman Fitch  
                    Mayor Gresk

Nays:           None  
Absent:         Councilman Prendiville

Motion Carried Unanimously

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

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 25<sup>th</sup> day of APRIL, 2018, among the City of Wheaton Illinois an Illinois corporation, located in DuPage County, State of Illinois ("City"), and John S & Nancy M Williams ("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, John S & Nancy M Williams (hereinafter "Owner"), the owner of the premises located at 610 N GARY 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.

2.) JACK & Nancy Weber are the owners of property located at 610 N GARY 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 of N. Gary Av adjacent to 610 N. Gary 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.

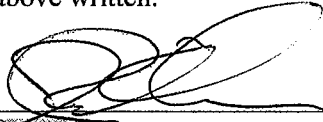
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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

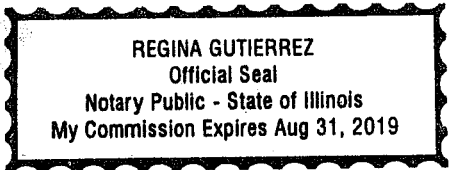
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

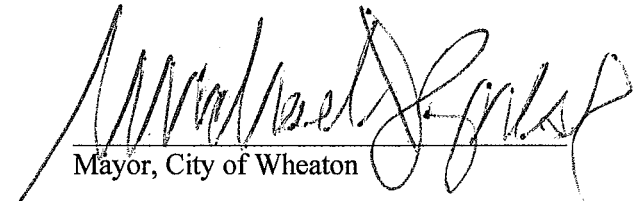
  
\_\_\_\_\_  
Owner

*Nancy M. Williams*  
\_\_\_\_\_  
Owner

Subscribed and sworn to before me this 27 day of April, 2018.

*Regina Gutierrez*  
\_\_\_\_\_  
Notary Public  
(Notary Seal)



  
\_\_\_\_\_  
Mayor, City of Wheaton

Attested by:  
*Sharon Bennett Hagan*  
\_\_\_\_\_  
City Clerk

**EXHIBIT A**

Legal Description:

OF LOT 3 IN BLOCK 8 IN NOAHS E. GARYS FIRST ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 4, 1892, AS DOCUMENT 48090 IN DUPAGE COUNTY, ILLINOIS.

610 N. GARY AVE Wheaton, IL 60187  
address

PIN 05-17-213-008

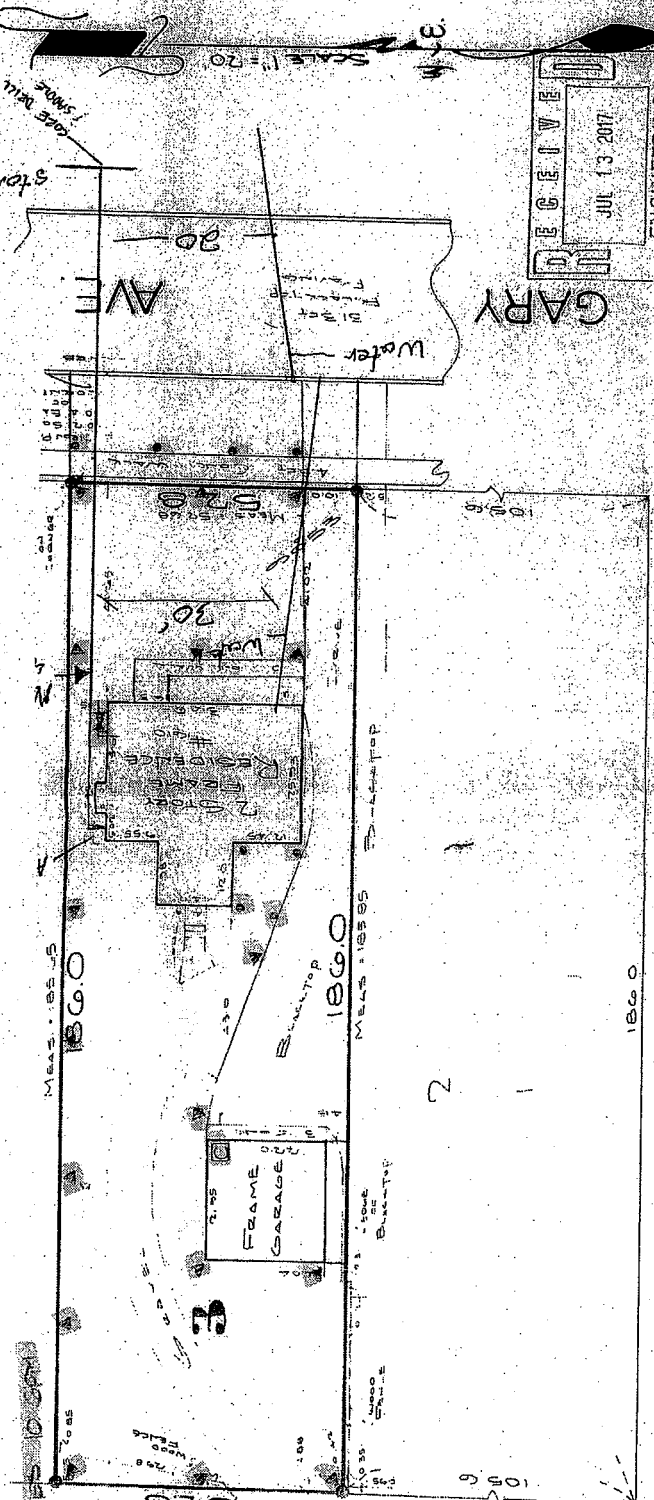
**PLAT OF SURVEY**

OF LOT 3 IN BLOCK 8 IN NOAH'S E. GARYS FIRST ADDITION TO WHEATON, BEING A SUBDIVISION OF PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 4, 1892, AS DOCUMENT 48990 IN DUPAGE COUNTY, ILLINOIS.

20701650 # 610



- OPENING IN WALL
- △ SPARKARREST HEAD
- SPARKARREST HEAD
- CONTROL POINT
- △ 1" B.P. VALUE



RECEIVED  
JUL 13 2017  
ENGINEERING  
APPROVED  
BY: [Signature]

Supervisor Updated  
24 January 1984  
City of Wheaton  
P.L.S. #2500

THIS SURVEY AND PLAT OF UTILITY HAS  
VOID AS TO LOT AND ENLARGED GARAGE  
AND REVISION

RECEIVED

JUL 13 2017

LINCOLN AVE.

ILLINOIS  
DUPAGE  
TO CERTIFY THAT AN ILLINOIS LAND SURVEYOR HAS SURVEYED  
THE PROPERTY DESCRIBED IN THE ABOVE CAPTION AS SHOWN BY THE INSTRUMENT  
WHICH IS A CORRECT AND TRUE REPRESENTATION OF SAID SURVEY.

BUILDINGS LOCATED AS SHOWN ON THIS  
12<sup>TH</sup> DAY OF [Month] A.D. 2017

REFER TO DEED OR GUARANTEE POLICY FOR BUILDING LINE RESTRICTIONS NOT SHOWN ON PLAT OF SURVEY.  
GLEN D. KRISCH, LAND SURVEYOR  
115 S. CALLETTA, WHEATON, ILLINOIS