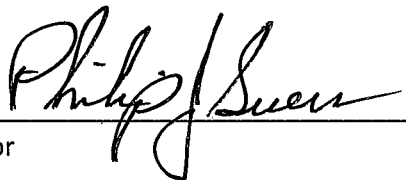


RESOLUTION R-2020-77

A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1220 W. Thomas Road)

**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 August 25<sup>th</sup>, 2020, between the City of Wheaton and Eric and Mary Cann for 1220 W. Thomas Road, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 21<sup>st</sup> day of September 2020.

  
\_\_\_\_\_  
Mayor

ATTEST:

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

Ayes:

Roll Call Vote

Councilman Barbier  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Sues  
Councilwoman Robbins  
Councilman Rutledge  
Councilman Zaruba

Nays:

None

Absent:

None

Motion Carried Unanimously



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT  
RIGHT-OF-WAY (W. Thomas Rd.)  
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 25 day of August, 2020, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Eric and Mary Cann ("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, Eric and Mary Cann (hereinafter "Owner"), the owner of the premises located at 1220 W. Thomas Rd., 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.) Eric and Mary Cann are the owners of property located at 1220 W. Thomas Rd., 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 only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The 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 the 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.

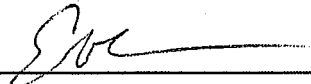
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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

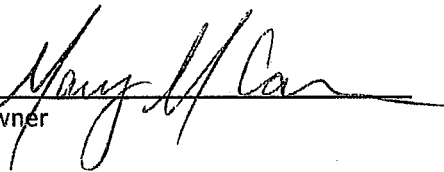
10.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Owners.

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

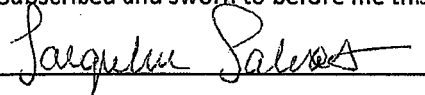
12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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.

  
\_\_\_\_\_  
Owner

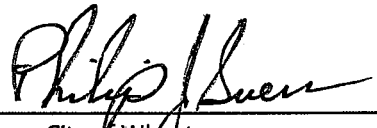
  
\_\_\_\_\_  
Owner

Subscribed and sworn to before me this 25<sup>th</sup> day of AUGUST, 2020

  
\_\_\_\_\_  
Notary Public

(Notary Seal)



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

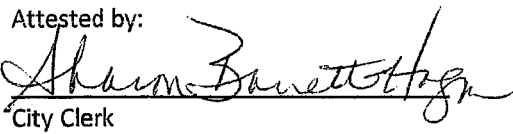
Attested by:  
  
\_\_\_\_\_  
City Clerk

EXHIBIT A

Legal Description:

Lot 7 In Woodlawn Place, Being a Subdivision of  
Part of lot 7 In Muchkelt Land Partnership Assessment  
Plat, Being Part of the Northwest Quarter  
of Section 8, Township 39 North, Range 10 East  
of the Third Principal Meridian, According to  
the Plat Thereof Recorded May 19, 2015  
As Document R 2015-052811, In DuPage County IL

1220 W. Thomas Rd. Wheaton, IL 60187  
Street Name

P.I.N. 05-08-118-010



20 10 0 20  
SCALE: 1" = 20'

# PLAT OF SURVEY

## "CLOSING SURVEY"

LOT 7, IN WOODLAWN PLACE, BEING A SUBDIVISION OF PART OF LOT 1 IN MUEHLFELT LAND PARTNERSHIP ASSESSMENT PLAT, BEING PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 19, 2015, AS DOCUMENT R2015-052811, IN DUPAGE COUNTY, ILLINOIS.

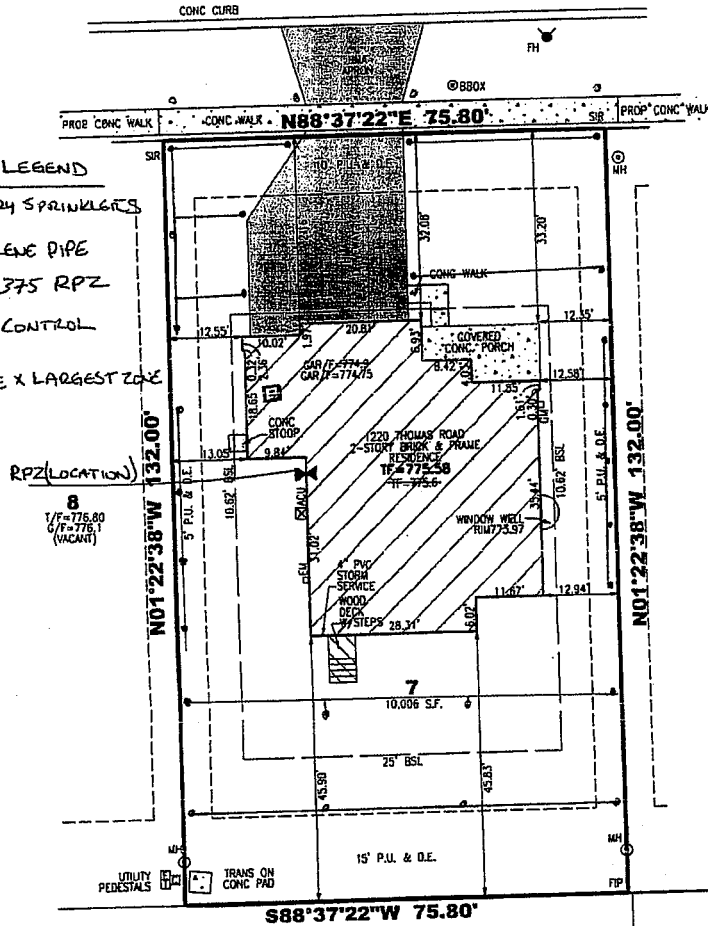
THOMAS ROAD

EXHIBIT B

**IRRIGATION LEGEND**

- 4" PEP ROTARY SPRINKLERS
- 1" POLYETHYLENE PIPE
- ▶ 1" WILKINS 375 RPZ
- PRO H200 CONTROL

MAX FLOW RATE X LARGEST ZONE  
7.6 GPM



**LEGEND**

- BSL BUILDING SETBACK LINE
- DE DRAINAGE EASEMENT
- UE UTILITY EASEMENT
- ACU AIR CONDITIONER UNIT
- BB BUFFALO BOX
- CO CLEAN-OUT
- EM ELECTRIC METER
- GM GAS METER
- CONC CONCRETE
- FIR FOUND IRON ROD
- FNC FENCE CORNER
- PEDC CABLE PEDESTAL
- PEDE ELECTRIC PEDESTAL
- HMA HOT MIX ASPHALT
- SIR SET IRON ROD
- SL STREET LIGHT
- TOC TOP OF DEPRESSION CURB
- TC TOP OF CURB
- T/F TOP OF FOUNDATION
- P.U. & D.E. PUBLIC UTILITY & DRAINAGE EASEMENT
- FIP FOUND IRON PIPE

**SURVEYOR'S NOTES:**  
1. THIS SURVEY IS SUBJECT TO MATTERS OF TITLE WHICH MAY BE REVEALED BY A CURRENT TITLE REPORT.  
2. BUILDING DIMENSIONS AND TIES SHOWN HEREON ARE MEASURED FROM THE OUTSIDE FACE OF CONCRETE FOUNDATION.  
3. SURVEY IS BASED ON FIELD WORK COMPLETED ON 06-07-16.

**GENERAL NOTES:**  
1. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS THEREOF.  
2. ONLY THOSE BUILDING LINE SETBACKS AND EASEMENTS WHICH ARE SHOWN ON THE RECORDED PLAT OF SUBDIVISIONS ARE SHOWN HERE ON. REFER TO THE DEED, TITLE INSURANCE POLICY AND LOCAL ORDINANCES FOR OTHER RESTRICTIONS.  
3. COMPARE DEED DESCRIPTION AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT AND DISCREPANCIES TO THE SURVEYOR AT ONCE.  
4. NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENTS.  
5. CERTIFIED COPIES OF THIS SURVEY BEAR AN IMPRESSED SEAL.

2  
**COUNTY CLERK'S DIVISION OF P. RUTLEDGE FARM**

**DEVELOPER**  
M/A HOMES  
400 EAST DIEHL ROAD, SUITE 230  
NAPERVILLE, ILLINOIS 60563  
P: 630-577-5200 F: 630-577-5220

**SETBACKS:**  
FRONT YARD MINIMUM = 30.0'  
SIDE YARD MINIMUM = VARIES  
CORNER SIDE YARD MINIMUM = 12.0'  
REAR YARD MINIMUM = 25.0'

**SOURCE BENCHMARK:**  
DUPAGE COUNTY BENCHMARK #M10001:  
DISK SET IN WEST SIDE OF CONCRETE TRAFFIC SIGNAL BASE, LOCATED IN THE SOUTHEAST CORNER OF GENEVA ROAD AND PRESIDENT STREET.  
ELEVATION = 770.40 (NAVD 1988).

**SITE BENCHMARK:**  
NORTHWEST ARROW BOLT OF HYDRANT LOCATED IN EAST RIGHT OF WAY OF WOODLAWN AVENUE WHERE IT DEAD ENDS, APPROXIMATELY 356 FEET EAST OF THE NORTHWEST CORNER OF SITE.  
ELEVATION = 773.00



STATE OF ILLINOIS) SS  
COUNTY OF COOK)

WE, MACKIE CONSULTANTS LLC, AN ILLINOIS PROFESSIONAL DESIGN FIRM NO. 184-002694, HEREBY CERTIFY THAT WE HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THIS PLAT REPRESENTS THE CONDITIONS FOUND AT THE TIME OF SAID SURVEY.

GIVEN UNDER MY HAND AND SEAL THIS 13<sup>TH</sup> DAY OF  
JUNE, 2016 IN ROSEMONT, ILLINOIS.

MACKIE CONSULTANTS LLC

*Russell P. Ory*  
RUSSELL P. ORY  
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 025-002753  
LICENSE EXPIRES: NOVEMBER 30, 2016

**Mackie Consultants, LLC**  
9575 W. Higgins Road, Suite 500  
Rosemont, IL 60018  
(847)696-1400  
www.mackieconsult.com

DATE	DESCRIPTION	BY
03-01-16	FOUNDATION LOCATION	KMF
06-13-16	FINAL RECORD SURVEY	SMC
06-13-16	CLOSING SURVEY	RPO

**WOODLAWN PLACE**  
**1220 THOMAS ROAD**  
**WHEATON, ILLINOIS**

DATE: 12-10-15 DR BY: SMC PROJ NO: 2638 LOT NO: 7

