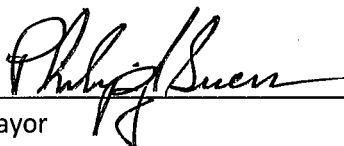


RESOLUTION R-2020-103

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1241 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 November 3rd, 2020, between the City of Wheaton and the Pasquale Dechiara Living Trust for 1241 W. Thomas Road, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 16th day of November 2020.



Mayor

ATTEST:



City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Barbier Councilwoman Bray-Parker Councilwoman Fitch Mayor Sues Councilwoman Robbins Councilman Rutledge Councilman Zaruba
Nays:	None
Absent:	None
	<u>Motion Carried Unanimously</u>

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Thomas Road)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 3 day of NOV, 2020, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Pasquale DeChiara Living Trust ("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, Pasquale DeChiara Living Trust (hereinafter "Owner"), the owner of the premises located at 1241 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.) Pasquale DeChiara Living Trust are the owners of property located at 1241 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.

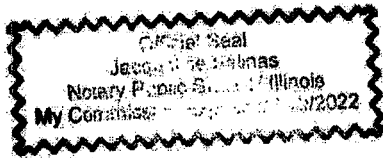
Pasquale De Chiara
Owner

Tim DeChiara
Owner

Subscribed and sworn to before me this 3 day of November, 2020

Jaqueline Salvo Notary Public

(Notary Seal)



Philip J. Suen
Mayor, City of Wheaton

Attested by:

Shawn Bennett-Hagan
City Clerk

EXHIBIT A

Legal Description:

Lot 12, 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 principle meridian, according to the plat
there of recorded May 19, 2015, as document R2015-052811, In
DuPage County, ILLINOIS.

1241 Thomas Wheaton, IL 60187
address

P.I.N. 05-08-112-017

Certification and Affidavit of Trust for the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017

Pursuant to 760 ILCS 5/8.5, this Certification and Affidavit of Trust is signed by all the currently acting Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, who declare:

1. The Trustmaker of the trust is PASQUALE DeCHIARA. The trust is revocable by the Trustmaker.
2. The Trustees of the trust are PASQUALE DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187) and ERIN M. DeCHIARA (whose address is 1241 W. Thomas Rd., Wheaton, Illinois 60187). The signature of one Trustee is sufficient to exercise the powers of the Trustee.
3. The Trustee Succession provisions are set forth in Article Three of the trust, a true copy of which may be attached to this certification.
4. The tax identification number of the trust is the Social Security number of PASQUALE DeCHIARA.
5. Title to assets held in the trust will be titled as:
PASQUALE DeCHIARA and ERIN M. DeCHIARA, Trustees of the PASQUALE DeCHIARA LIVING TRUST dated June 29, 2017, and any amendments thereto.
6. An alternative description is effective to title assets in the name of the trust or to designate the trust as a beneficiary if the description includes the name of at least one initial or successor Trustee, any reference indicating that property is being held in a fiduciary capacity, and the date of the trust.
7. Excerpts from the trust document that establish the trust, designate the Trustee, and set forth the powers of the Trustee will be provided upon request. The powers of the Trustees include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests.
8. The terms of the trust provide that a third party may rely upon this Certification and Affidavit of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
9. The trust has not been revoked, modified, or amended in any way that would cause the representations in this Certification and Affidavit of Trust to be incorrect.

EXHIBIT A

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Lot 12, In woodlawn Place, being a Subdivision of Part of Lot 1
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amendments thereto.
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7. Excerpts from the trust document that establish the trust, designate the Trustee, and set forth the powers of the Trustee will be provided upon request. The powers of the Trustees include the power to acquire, sell, assign, convey, pledge, encumber, lease, borrow, manage, and deal with real and personal property interests.
8. The terms of the trust provide that a third party may rely upon this Certification and Affidavit of Trust as evidence of the existence of the trust and is specifically relieved of any obligation to inquire into the terms of this trust or the authority of my Trustee, or to see to the application that my Trustee makes of funds or other property received by my Trustee.
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June 29, 2017

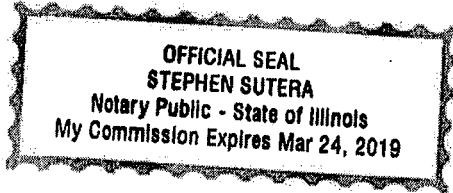
Pasquale DeChiara
PASQUALE DeCHIARA, Trustee

Erin M DeChiara
ERIN M. DeCHIARA, Trustee

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

This instrument was acknowledged before me on June 29, 2017, by PASQUALE DeCHIARA and ERIN M. DeCHIARA, as Trustees.

[Seal]



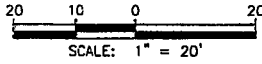
Stephen Sutera
Stephen Sutera, Notary Public
My commission expires: March 24, 2019



PLAT OF SURVEY

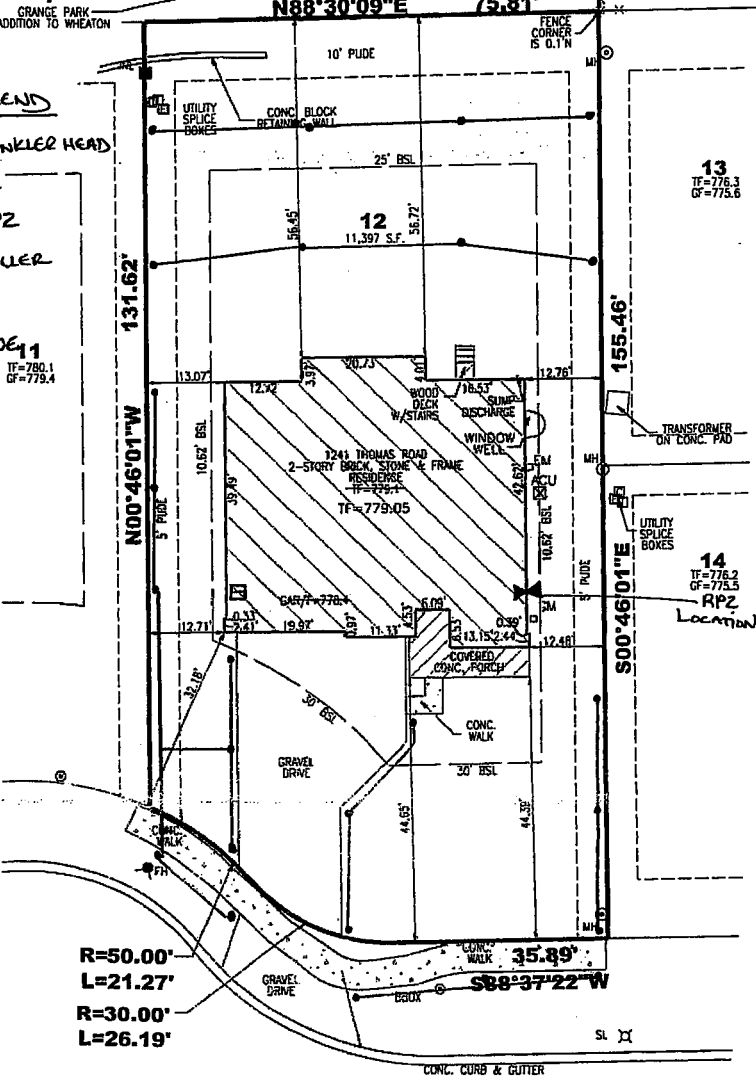
"CLOSING SURVEY"

LOT 12, IN WOODLAWN PLACE, BEING A SUBDIVISION OF PART OF LOT 1 IN MUEHLELT 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.



IRRIGATION LEGEND

- P.G.P ROTARY SPRINKLER HEAD
 - 1" POLYETHYLENE PIPE
 - ⊗ 1" WILKINS 375 RPZ
 - ☐ PROH1200 CONTROLLER
- MAX FLOW RATE
8.7 GPM X LARGEST ZONE



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 HOX MIX ASPHALT
- SIR SET IRON ROD
- SL STREET LIGHT
- TDC TOP OF DEPRESSED CURB
- TC TOP OF CURB
- T/F TOP OF FOUNDATION
- P.U. PUBLIC UTILITY & D.E. DRAINAGE EASEMENT

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 04-07-16
4. PROPERTY NOT MONUMENTED AT CLIENT'S REQUEST.

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.

DEVELOPER

M/I 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

THOMAS ROAD



STATE OF ILLINOIS)
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 11TH DAY OF APRIL, 2016 IN ROSEMONT, ILLINOIS.

MACKIE CONSULTANTS LLC

Russell W. Olsen
RUSSELL W. OLSEN
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-002718
LICENSE EXPIRES: NOVEMBER 30, 2016



Mackie Consultants, LLC
9575 W. Higgins Road, Suite 500
Rosemont, IL 60018
(847)698-1400
www.mackieconsult.com

DATE	DESCRIPTION	BY
10-06-15	SITE PLAN	KMF
12-04-15	REVISED SITE PLAN	GKF
01-05-16	FOUNDATION LOCATION	SMC
04-09-16	CLOSING SURVEY	RWO

WOODLAWN PLACE
1241 THOMAS ROAD
WHEATON, ILLINOIS

DATE: 10-05-15 DR BY: KMF PROJ NO: 2638 LOT NO: 12