


RESOLUTION R-2021-39

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1505 Spero Court)

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 28th, 2021, between the City of Wheaton and Matthew and Kristine Wind for 1505 Spero Court, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 17th day of May 2021.



Mayor

ATTEST:



City Clerk

Ayes:

Roll Call Vote

Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Sues
Councilwoman Fitch
Councilwoman Robbins
Councilman Weller

Nays:

None

Absent:

None

Motion Carried Unanimously



APR 29 2021

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Spero Ct. & Hawthorne Blvd.)
Street Name**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 28 day of April, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Matthew and Kristine Wind ("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, Matthew and Kristine Wind (hereinafter "Owner"), the owner of the premises located at 1505 Spero Ct., 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.) Matthew and Kristine Wind are the owners of property located at 1505 SPERO CT., 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.

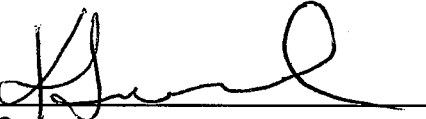
11.) The Owners obligations under this Agreement shall be joint and several.

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.

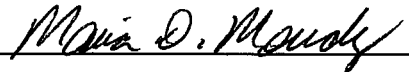


Owner




Owner

Subscribed and sworn to before me this 28th day of April, 2021.


_____ Notary Public

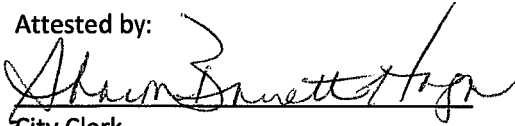
(Notary Seal)





Mayor, City of Wheaton

Attested by:



City Clerk

EXHIBIT A

Legal Description:

LOT 51 IN SPERO'S SIXTH RESUBDIVISION OF PART OF ARTHUR T. MCINTOSH AND COMPANY'S EAST BOULEVARD SUBDIVISION OF PART OF THE SOUTH HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SPERO'S SIXTH RESUBDIVISION RECORDED DECEMBER 20, 1978 AS DOCUMENT NUMBER R78-122637, IN DUPAGE COUNTY, ILLINOIS.

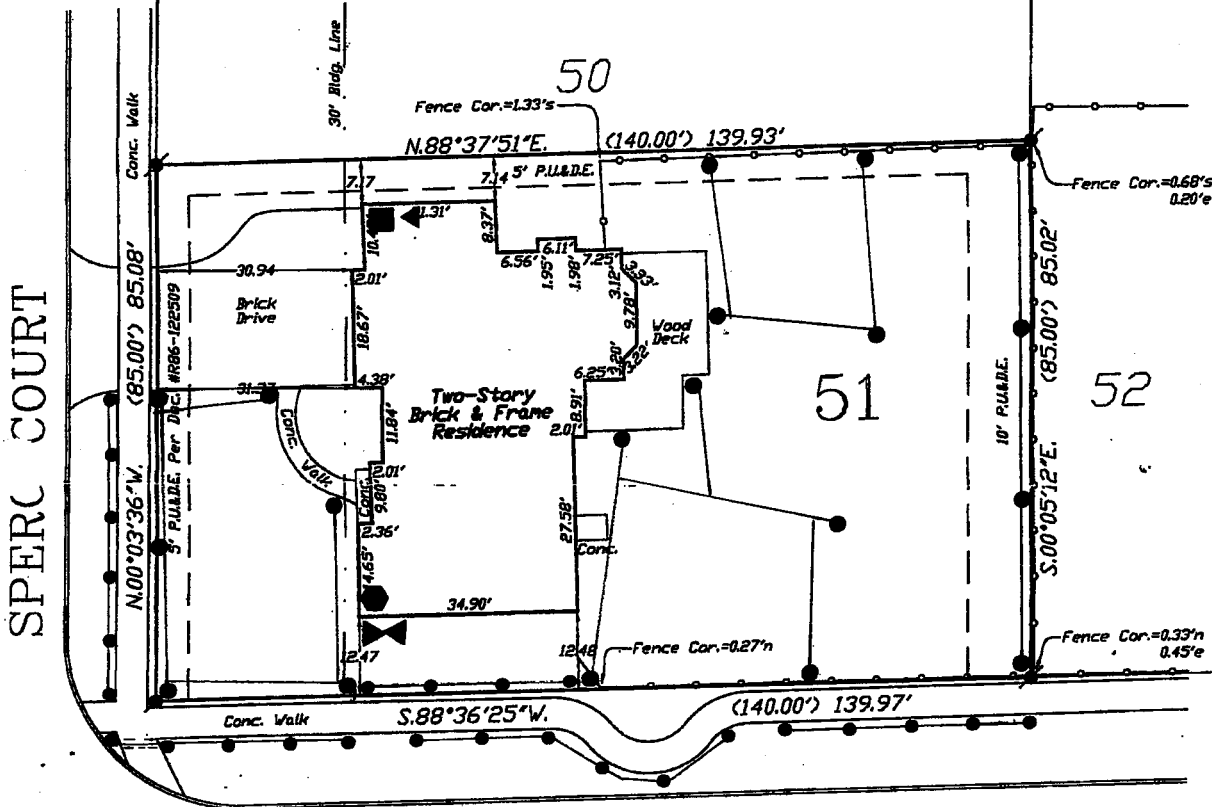
1505 SPERO CT. _____ Wheaton, IL 60187
Street Name

P.I.N. 05-10-302-020 _____

PLAT OF SURVEY

LOT 51 IN SPERO'S SIXTH RESUBDIVISION OF PART OF ARTHUR T. MCINTOSH AND COMPANY'S EAST BOULEVARD SUBDIVISION OF PART OF THE SOUTH HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID SPERO'S SIXTH RESUBDIVISION RECORDED DECEMBER 20, 1978 AS DOCUMENT NUMBER R78-122637, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-10-302-020



SPERC COURT

HAWTHORNE BLVD.

- Legend**
- 1' RPZ
 - Existing Meter
 - Controller
 - Rain Sensor
 - Sprinkler Head

All Control boxes, piping + sprinkler heads installed 3ft. from City Valve, fire hydrant + R-Box
18 GPM per Largest zone

APR 29 2021

- FOUND IRON PIPE
- FOUND IRON ROD
- FOUND RR SPIKE
- FOUND PK NAIL
- SET IRON PIPE
- RECURD
- MEASURED
- EXISTING GRADE
- PROPOSED GRADE CHANGE
- EXISTING CONTOUR
- PROPOSED CONTOUR
- DIRECTION OF FLOW
- CHAIN LINK FENCE
- WOOD FENCE

BOUNDARY LINES ARE SHOWN ONLY WHERE THEY ARE SO RECORDED ON THE REFER TO YOUR DEED OR ABSTRACT.

STATE OF ILLINOIS) S.S.
COUNTY OF KANE)

I, STACY L. FERGUSON, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY HAS BEEN SURVEYED UNDER MY DIRECTION AND THAT THIS PLAT IS A TRUE AND CORRECT REPRESENTATION THEREOF. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMALS THEREOF.

DATED THIS 25TH DAY OF MARCH, A.D., 2005

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-002952 EXP. 11/30/06
ILLINOIS PROFESSIONAL DESIGN FIRM - LAND SURVEYING CORP. NO. 184-003154 EXP. 4/30/05
THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY



Permit		
Grading		
Mortgage	3/23/05	A.W.-3/23/05
Foundation		
Vacant		
Type of Survey	Date	Bk. - Pg. Date Dwn. / By
Common Address : 1505 SPERO COURT		
Builder/Client : KARABA, THOMAS		
Job No. :	05-4058	Scale : 1"=20'
STACY FERGUSON LAND SURVEYING, INC. SURVEYING, CONSTRUCTION DESIGN, DRAFTING, MAPPING, LAYOUT AND CONSULTING 238 E. WILSON STREET BROMMA, ILLINOIS PHONE # (815) 679-0158		

