

RESOLUTION R-2021-48

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1485 Wilmette Street)

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 May 11th, 2021, between the City of Wheaton and Kyle & Nicole Somerfield for 1485 Wilmette Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 7th day of June 2021.



Mayor

ATTEST:



City Clerk

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



CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Wilmette St)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 11 day of MAY, 2021, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Kyle & Nicole Somerfield ("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, Kyle & Nicole Somerfield (hereinafter "Owner"), the owner of the premises located at 1485 Wilmette St, 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.) Kyle & Nicole Somerfield are the owners of property located at 1485 Wilmette St, 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.

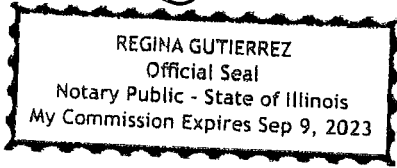
Kyle [Signature]
Owner

[Signature]
Owner

Subscribed and sworn to before me this 11 day of May, 2021.

Regina Gutierrez Notary Public

(Notary Seal)



Philip J. [Signature]
Mayor, City of Wheaton

Attested by:

[Signature]
City Clerk

EXHIBIT A

Legal Description:

LOT 69 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 R78-122637, IN DUPAGE COUNTY, ILLINOIS.

1485 Wilmette St Wheaton, IL 60187
Street Name

P.I.N. 05-10-311-022

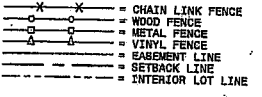
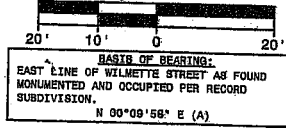
LEGEND

A = ASSUMED
 C = CALCULATED
 CH = CHORD
 CL = CENTERLINE
 D = DEED
 E = EAST
 F.I.P. = FOUND IRON PIPE
 F.I.R. = FOUND IRON ROD
 FT. = FEET/FOOT
 L = ARC LENGTH
 M = MEASURED
 N = NORTH
 NE = NORTHEAST

NW = NORTHWEST
 P.O.B. = POINT OF BEGINNING
 P.O.C. = POINT OF COMMENCEMENT
 R = RECORD
 RAD = RADIUS
 R.O.W. = RIGHT OF WAY
 S = SOUTH
 S.I.P. = SET IRON PIPE
 S.I.R. = SET IRON ROD
 SE = SOUTHEAST
 SW = SOUTHWEST
 W = WEST

PLAT OF SURVEY
 OF

LOT 69 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 R78-122637, IN DUPAGE COUNTY, ILLINOIS.



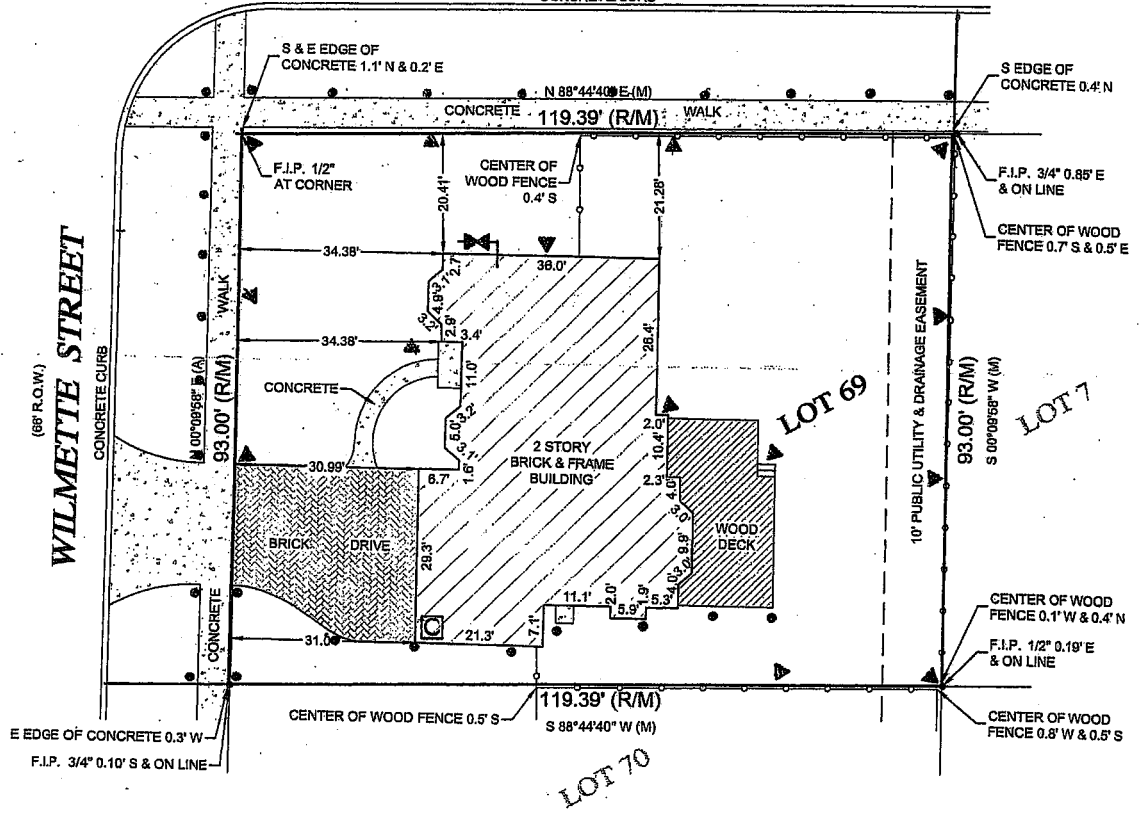
AREA OF SURVEY:
 CONTAINING 11,100 SQ. FT. OR 0.25 ACRES MORE OR LESS

SPRINKLER KEY

- SPINKLER
- ▲ SPINKLER
- TIMER
- ✱ PPOZ VALUE

LARGEST ZONE USES 12 GPM

(88° R.O.W.)
E. HAWTHORNE BOULEVARD
 CONCRETE CURB



Morris Engineering, Inc.
 515 Warrenville Road, Lisle, IL 60532
 Phone: (630) 271-0770
 FAX: (630) 271-0774
 WEBSITE: WWW.ECIVIL.COM

STATE OF ILLINOIS)
 COUNTY OF DUPAGE)
 I, THE UNDERSIGNED, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT "THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY," AND THAT THE PLAT HEREON DRAWN IS A CORRECT REPRESENTATION OF SAID SURVEY.

DATED, THIS 5TH DAY OF JUNE, A.D., 2019, AT LISLE, ILLINOIS.

J. L. Morrison
 JAMES LEE MORRISON
 2317 PROFESSIONAL LAND SURVEYOR STATE OF ILLINOIS LISLE, ILLINOIS

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 036-2317
 LICENSE EXPIRATION DATE NOVEMBER 30, 2020
 ILLINOIS BUSINESS REGISTRATION NO. 184-001245

NOTE:

- ALL TIES SHOWN ON THIS SURVEY ARE MEASURED TO THE BUILDING'S SIDING (BRICK, FRAME, STUCCO, METAL, ETC.) AND NOT TO THE FOUNDATION, UNLESS NOTED OTHERWISE.
- ROOF LINES AND OVERHANGS ARE TYPICALLY NOT SHOWN HEREON.
- COMPARE ALL DISTANCES AND POINTS IN FIELD AND REPORT ANY DISCREPANCIES TO SURVEYOR AT ONCE.
- NO DIMENSIONS SHALL BE ASSUMED BY SCALING.

ADDRESS COMMONLY KNOWN AS 1485 WILMETTE STREET WHEATON, ILLINOIS

CLIENT LAW OFFICE OF LORA MATTHEWS FAUSETT P.C.

FIELDWORK DATE (CREW) 08/04/2019 (NM/DL/SB)
 DRAWN BY: LV REVISED: JOB NO. 19-05-0592

