

**Consent Agenda
New Business #4**

Memorandum

Paul G. Redman, P.E.
Director of Engineering



To: The Honorable Mayor and City Council
Date: July 9, 2018
Subject: Construction, Use, and Indemnification Agreement Approval

Section 22-8 of the Wheaton City Code requires the owner of property to execute a Construction, Use, and Indemnification Agreement with the City as a permit requirement for the installation of a lawn irrigation system within the City right-of-way or parkway. A resolution authorizing the execution of such an agreement for 567 Amy Lane is attached to this memorandum for your consideration. City staff recommends adoption of the resolution as submitted.

RESOLUTION R-2018-00

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(567 Amy Lane)**

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 June 26, 2018, between the City of Wheaton and Ashley and Christopher Rocci of 567 Amy Lane, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 16th day of July 2018.

Mayor

ATTEST:

City Clerk

Roll Call Vote

Ayes:
Nays:
Absent:

**CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (Amy Lane)**

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 26 day of June, 2018, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Ashley & Christopher Rocci ("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, Ashley Christopher Rocci (hereinafter "Owner"), the owner of the premises located at 567 Amy Lane, 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.) Ashley Christopher Rocci are the owners of property located at 567 Amy Lane, 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 adjacent to 567 Amy Lane

_____ 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 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.

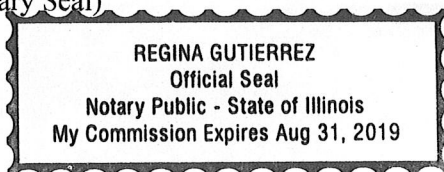
Ashley H Roci
Owner

Christopher J. Roci
Owner

Subscribed and sworn to before me this 26 day of June, 2018.

Regina Gutierrez Notary Public

(Notary Seal)



Mayor, City of Wheaton

Attested by:

City Clerk

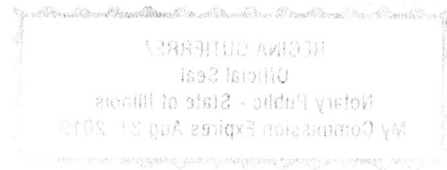
EXHIBIT A

Legal Description:

LOT 5 IN NORTHWOODS OF WHEATON Being Part of The
NORTHEAST 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 R2015-052814 in DuPage County ILLINOIS

567 Amy Lane Wheaton, IL 60187
address

P.I.N. 05-08-222-005



PLAT OF SURVEY

"CLOSING SURVEY"

SCALE: 1" = 20'

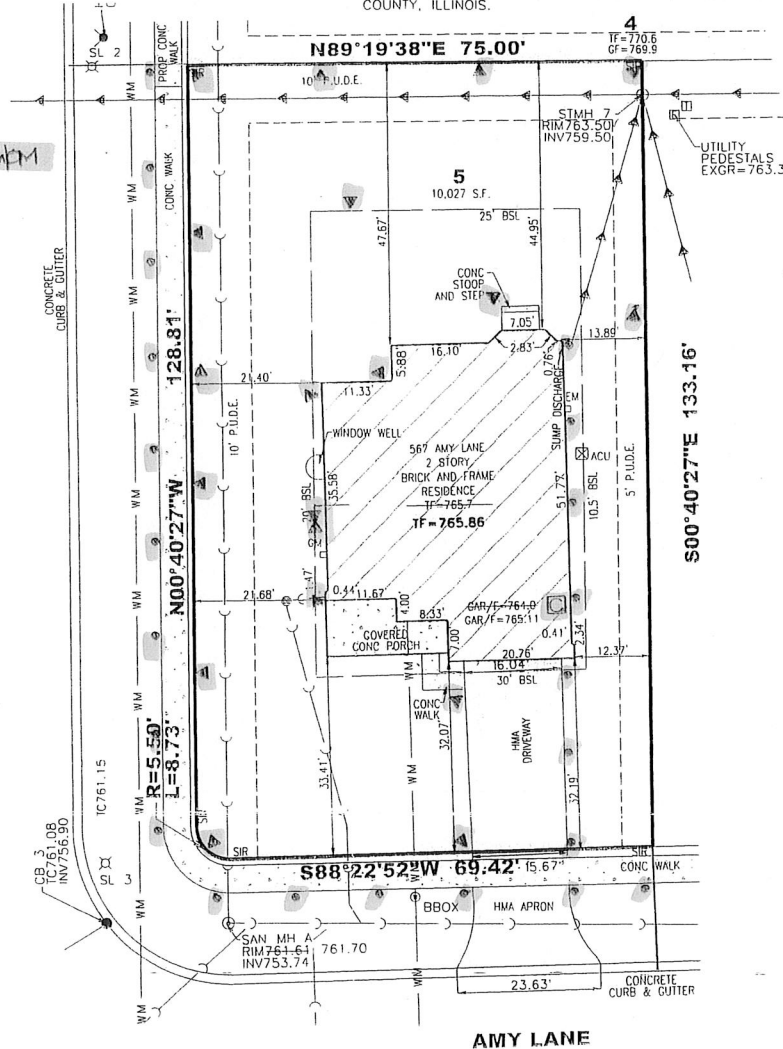
SPRINKLER 1/24

☒ SPRINKLER

☐ SPRINKLER

☐ TIMER

MARY COURT



6
EXTF = 766.18


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
TC	TOP OF DEPRESSION CURB
TOT	TOP OF CURB
F/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 05-13-16.
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. COPY DEED DESCRIPTION AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT ANY DISCREPANCIES TO THE SURVEYOR AT ONCE.
4. NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENTS.
5. THREE TRUE COPIES OF THIS SURVEY BEAR AN IMPRESSED SEAL OF THE SURVEYOR.

CUT SQUARE IN BASE OF CONCRETE LIGHT POLE
LOCATED IN WEST RIGHT OF WAY OF MORSE STREET,
APPROXIMATELY 180 FEET NORTH AND 35 FEET WEST
OF THE SOUTHWEST CORNER OF SITE (2ND LIGHT POLE
NORTH OF SOUTHWEST CORNER OF SITE).



 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)696-1400
www.mackieconsult.com

DATE	DESCRIPTION	BY
08-12-15	PERMIT PLAT	SMC
09-25-15	REVISED SITE PLAN	MSR
10-21-15	FOUNDATION LOCATION	RW
05-18-16	FINAL RECORD SURVEY	SMC
05-18-16	CLOSING SURVEY	SMC

**NORTHWOODS OF WHEATON
567 AMY LANE
WHEATON, ILLINOIS**

DATE: 08-12-15	DR BY: SMC	PROJ NO: 2637	LOT NO: 5
----------------	------------	---------------	-----------