

RESOLUTION R-31-11

**RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(2364 Appleby Drive)**

BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement dated May 13, 2011, between the City of Wheaton and Michael and Vivian Prapuolenis of 2364 Appleby Drive, Wheaton, Illinois; and the City Clerk is authorized to attest to the signature of the Mayor.

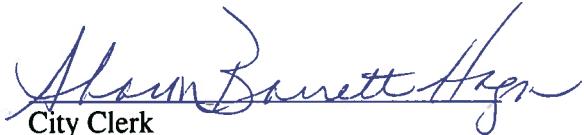
ADOPTED this 6th day of June, 2011.



Michael Gresk

Mayor

ATTEST:



Alison Barrett Hagan

City Clerk

Roll Call Vote:

Ayes:	Councilman Suess Councilwoman Ives Councilman Mouhelis Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (APPLEBY DRIVE)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 13 day of MAY, 2011, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and MICHAEL PRAPULSIS ("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, MICHAEL PRAPULSIS (hereinafter "Owner"), the owner of the premises located at 2364 APPLEBY DRIVE, 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.) MICHAEL & VIVIAN PRAPULSIS are the owners of property located at 2364 APPLEBY DRIVE, 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 2364 APPLEBY DR

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.

Michael Progolino
Owner

Vivian K. Progolino
Owner

Subscribed and sworn to before me this 13th day of May, 20 11.

Lisa T. Letourneau Notary Public

(Notary Seal)



Mayor, City of Wheaton

Attested by:

City Clerk

EXHIBIT A

Legal Description:

Of lot 12 in Block 7 in Scottdale Unit No. 3, a subdivision of part of the North half of Section 34, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plan thereof recorded June 20, 1978 as Document Number R 78- 54677, as amended by a Certificate of Correction recorded July 10, 1978 as Document Number R 78- 62512, a Certificate of Correction recorded June 18, 1980 as Document Number R 80-34799 and a Certificate of Correction recorded July 22, 1980 as Document Number R 80-41417, in DuPage County, Illinois.

address

2364 APPLEBY DR

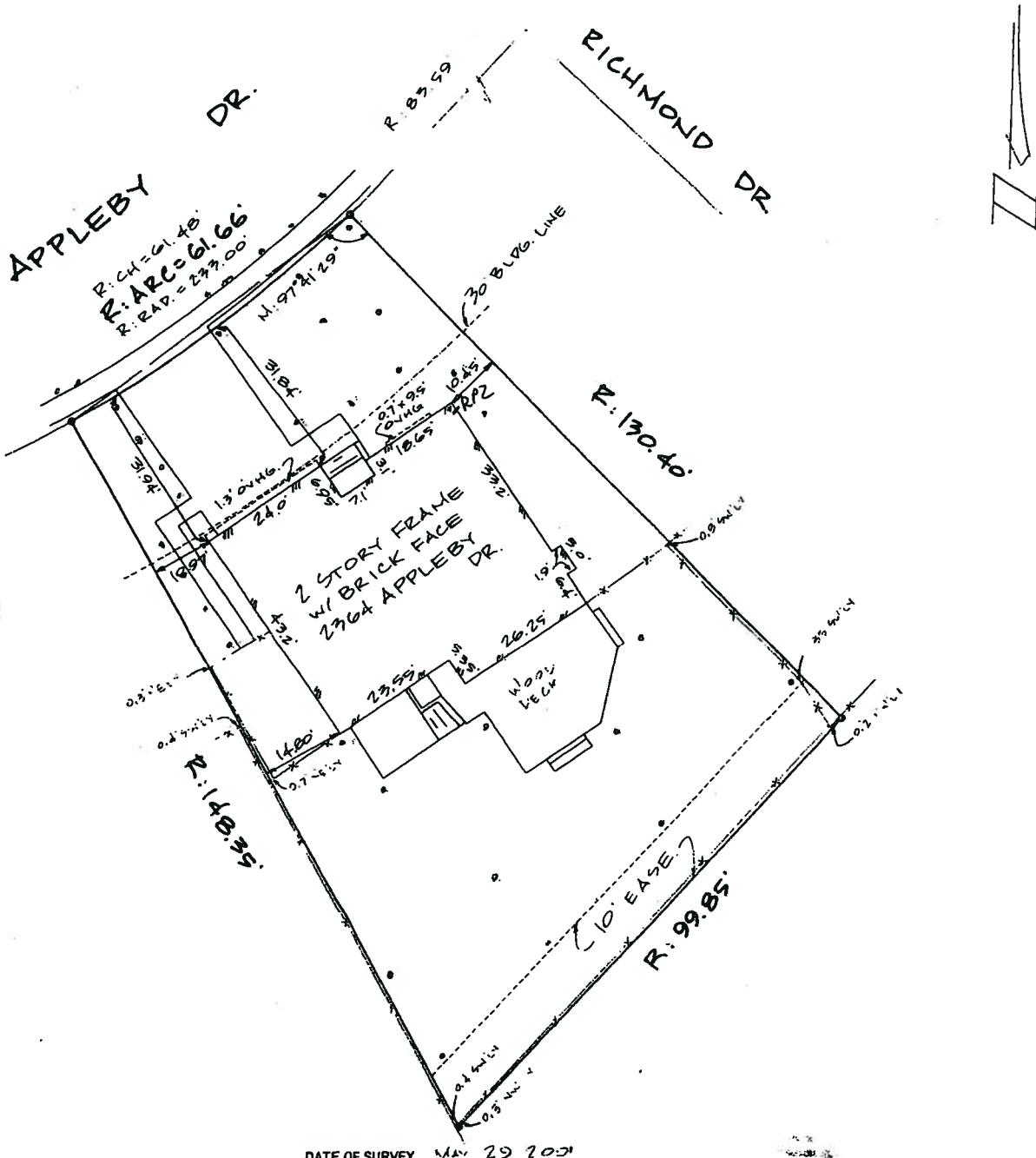
Wheaton, IL 60187

P.I.N. 05-34-109-071

PLAT OF SURVEY

EXHIBIT B

Of Lot 12 in Block 7 in Scottdale Unit No. 3, a Subdivision of part of the North half of Section 34, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded June 20, 1978 as Document Number R78-54677, as amended by a Certificate of Correction recorded July 10, 1978 as Document Number R78-62512, a Certificate of Correction recorded June 18, 1980 as Document Number R80-34799 and a Certificate of Correction recorded May 22, 1980 as Document Number R80-41417, in DuPage County, Illinois.



DATE OF SURVEY May 29 2001

STATE OF ILLINOIS

COUNTY OF DU PAGE

I HEREBY CERTIFY THAT THE ABOVE DESCRIBED PROPERTY HAS BEEN SURVEYED, UNDER MY SUPERVISION, ACCORDING TO THE OFFICIAL RECORD AND THAT THE ABOVE PLAT CORRECTLY REPRESENTS SAID SURVEY. ALL DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF.

I FURTHER CERTIFY THAT UNLESS OTHERWISE SHOWN, THE BUILDINGS ON THE PARCEL ARE WITHIN PROPERTY LINES AND THE ADJOINING VISIBLE IMPROVEMENTS DO NOT ENCRAGE ON THE ABOVE DESCRIBED PROPERTY.

I FURTHER CERTIFY THAT THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

Victor B. Fuge

MY LICENSE EXPIRES 11-30-2002

SCHLAF-SEDIG
& ASSOCIATES, INC.
1030 Summerfield Drive
Roselle, Illinois 60172

COMPARE THE DESCRIPTION OF THIS PLAT WITH DEED. REFER TO TITLE POLICY FOR ITEMS OF RECORD NOT SHOWN

CLIENT: E-1-10-12

LEGEND	
R - RECORD DISTANCE	CH - CHORD
M - MEASURED DISTANCE	• FOUND IRON
D - DEED	○ SET IRON
CONCRETE SHOWN SHADED	◆ UTILITY POLE W/ OVHD. WIRES
- FENCE LINE	
— LIMITS OF BUILDING	
SCALE 1" = 20 FEET	

