

RESOLUTION R-81-13

**A RESOLUTION AUTHORIZING EXECUTION OF DECLARATION OF
COVENANTS AND RESTRICTIONS/1215 SANTA ROSA AVENUE AND 1210
HOWARD CIRCLE**

WHEREAS, Kurt A. Fritz, Kristi Fritz, and TCS LH, LLC ("Owners") are owners of properties that are adjacent and contiguous to one another located at 1215 Santa Rosa Avenue and 1210 Howard Circle; and

WHEREAS, the Owners are jointly developing the properties in a manner that the two properties may be managed together while controlled by the same owners; and

WHEREAS, the Owners have sought a building permit seeking certificates of occupancy for the properties with a swimming pool located on the Howard Circle property; and

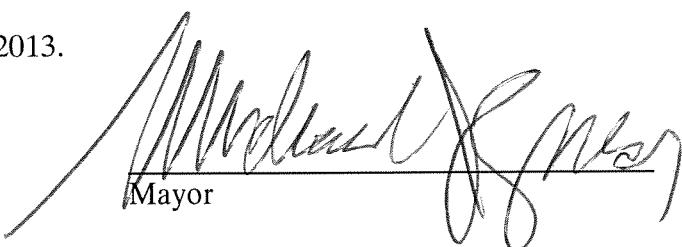
WHEREAS, the City through its codes and ordinances require construction of a fence between the two properties; and

WHEREAS, the Owners in lieu of constructing the fence between the two properties indicated a desire to record covenants and restrictions against the properties to eliminate certain issues which the City has with authorization of certificates of occupancy; and

WHEREAS, the City Council finds the Declaration of Covenants and Restrictions, attached as Exhibit A, so satisfies the City's requirements for construction of a fence.

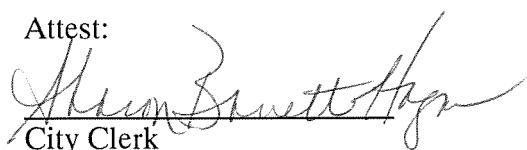
NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that the Mayor is hereby authorized to execute and City Clerk is hereby directed to attest to the Declaration of Covenants and Restrictions attached hereto as Exhibit A and, by this reference, made a part hereof.

Adopted this 21st day of October, 2013.



Michael J. Nagy
Mayor

Attest:



Alan Bennett Hagan
City Clerk

Ayes:

Roll Call Vote:

Councilwoman Pacino Sanguinetti
Councilman Scalzo
Councilman Suess
Councilman Prendiville

Councilman Rutledge
Councilman Saline
Mayor Gresk

Nays: None

Absent: None

Motion Carried Unanimously

THIS INSTRUMENT WAS PREPARED BY AND
AFTER RECORDING SHOULD BE RETURNED TO:

Scott E. Pointner, Esq.
Rathje & Woodward, LLC
300 E. Roosevelt Road, Ste 300
Wheaton, IL 60187

DECLARATION OF COVENANTS AND RESTRICTIONS

This Declaration of Covenants and Restrictions (this "**Declaration**"), is made as of this 15th day of MAY, 2013, by Kurt A. Fritz, Kristi L. Fritz (collectively "**Kurt and Kristi Fritz**"), and TCSLH, LLC, an Illinois limited liability company ("**TCSLH**") (Kurt and Kristi Fritz, and TCSLH are sometimes hereinafter referred to individually as a "**Declarant**" and collectively the "**Declarants**").

RECITALS:

WHEREAS Kurt and Kristi Fritz own that certain real property (sometimes hereinafter referred to as the "**Santa Rosa Property**"), commonly known as 1215 Santa Rosa Ave., Wheaton, Illinois 60187, located in the City of Wheaton (the "**City**"), DuPage County, Illinois, and legally described as follows:

LOT 3 IN RUSSELL'S SANTA ROSA SUBDIVISION BEING A SUBDIVISION OF THE WEST 178.3 FEET OF THE SOUTH 5 CHAINS OF THE NORTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 16, 1982, AS DOCUMENT R82-53168, IN DUPAGE COUNTY, ILLINOIS

P.I.N.: 05-09-407-038; and

WHEREAS, Kurt and Kristi Fritz are the sole managers and members of TCSLH, and have full authority to direct the actions of TCSLH; and

WHEREAS, TCSLH owns that certain real property (sometimes hereinafter referred to as the "**Howard Circle Property**"), commonly known as 1210 Howard Circle, Wheaton, IL 60187, and legally described as follows:

LOT 2 OF RUSSELL'S HOWARD AVENUE SUBDIVISION OF PART OF THE SOUTH EAST ¼ OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 24, 1965, AS DOCUMENT R65-17267, IN DUPAGE COUNTY, ILLINOIS

P.I.N.: 05-09-407-016 (the Santa Rosa Property and Howard Circle Property are sometimes hereinafter referred to collectively as the "**Properties**"); and

WHEREAS, the Properties are adjacent to and contiguous with one another, and share a common back yard border; and

WHEREAS, Kurt and Kristi Fritz, as the persons owning and/or controlling the development of the Properties are jointly developing the Properties in such a manner that the two Properties may be managed together while controlled by the same owners, but also in such a manner that in the future each property may be sold and/or leased separately and thereafter owned and/or controlled by different owners; and

WHEREAS, the Declarants sought a building permit and will be seeking certificates of occupancy for the Properties with a swimming pool (the “Pool”) being located on the Howard Circle Property; and

WHEREAS, the City has required (the City’s “Positions”) the Declarants to construct certain improvements, including but not limited to the erection of a fence, or to enter into this Declaration before being granted the permission to construct the Pool on the Howard Circle Property; and

WHEREAS, the Declarants therefore are willing to record this Declaration against the Properties to eliminate certain issues upon which the City has withheld authorizations needed by the Declarants to continue developing the Properties with the Pool.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and undertakings recited below, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Declarants hereby declare and covenant as follows:

1. **Incorporation and Conflicts.** The above-recitals are incorporated into these numbered paragraphs below as though fully set forth herein. In the event of a conflict between the above-recitals and these numbered paragraphs below, the terms and conditions of these numbered paragraphs below shall control.

2. **Approval of Plans.** The site plan attached hereto and incorporated herein as if fully set forth as Exhibit 1 is hereby accepted by the City strictly subject to the conditions set forth in this Declaration.

3. **Obligation to Install Fence.** Prior to the sale and/or lease of either or both of the Properties to another owner (or tenant as the case may), or the sale or lease of either or both Properties to different purchasers, a fence for the Pool that is in conformity with the City’s codes shall be constructed, and approved by the City. It is fully understood and acknowledged by the Declarants, and by virtue of the recording of this Declaration, it is the Declarant’s intent, that this Declaration runs with the land in perpetuity unless and until released by the owners of the Howard Circle Property with express written approval by the City. It is further expressly understood that the City shall be fully vested with the right to withhold a certificate of occupancy, as well as the issuance of the City’s real estate transfer stamp for either or both of the Properties in the event the Declarants are not in full compliance with this Declaration.

4. **Release of Obligation.** Subsequent to the construction of the Fence and acceptance thereof by the City, the City agrees that it will execute a release of this Declaration within a reasonable period of time after a release that is reasonably acceptable to the City has been tendered to the City. Any such release will be prepared by and recorded at the full cost and expense of the owner(s) of the Howard Circle Property.

5. **Conveyance Subject to Declaration.** All covenants, conditions, restrictions, rights, benefits, and privileges which are granted, created, reserved, or declared by this Declaration shall be deemed to run with the land and shall at all times be binding on the Declarants so long as they own one or both of the Properties, and thereafter any owner having at any time any interest or estate in all or any part of the Properties, unless the same have been released pursuant to the terms hereof.

6. **Enforcement Rights of the City.** The City is hereby granted the right, but not the obligation, to enforce the provisions of this Declaration. If any owner of the Properties shall default in any of its obligations under this Declaration and if such default shall continue for thirty (30) days after notice thereof in writing from the City to said owner (except in the event of an unsafe condition significantly affecting the health or safety of persons upon the Properties, in which case said thirty day cure period shall be reduced or eliminated to the extent necessary or advisable to protect persons on the Properties in the reasonable discretion of the City), then in such an event, the City shall have the right, (but not the obligation) to enter upon either or both of said Properties to remedy the same or cause the same to be done. This Declaration is intended to include the City's right, but not the obligation, to enter upon the Properties at reasonable times and upon reasonable notice to complete all obligations of the owners hereunder, including but not limited to the construction of the Fence thereon. The owner shall, upon demand, reimburse the City for the reasonable costs of such work, as well as the City's reasonable attorneys' fees and court costs related thereto, which shall further become a forecloseable lien against the Properties.

7. **Restriction on Amendment.** The City shall be deemed a beneficiary of this Declaration, and therefore this Declaration shall not be amended, modified or deleted without the prior written consent of the City.

8. **Severability.** Invalidation of any provision hereof by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

9. **Headings.** The headings contain in this Declaration are for reference purposes only and shall not in any way affect or limit the meaning or interpretation of this Declaration.

KURT A FRITZ

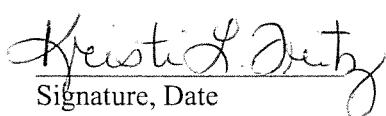


Signature, Date

5/15/13

Date

KRISTI L. FRITZ



Signature, Date

5/15/13

Date

TCS LH, LLC, an Illinois limited liability company



Signature, Title, Date

5/15/13

Date

Acknowledgment by the City

Signature, Title, Date

Mayor

10/22/13

