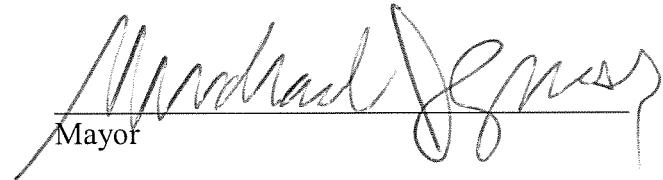


RESOLUTION R-63-14

**A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(629 West Elm 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 September 23, 2014 between the City of Wheaton and the Douglas M. Thompson Living Trust for 629 West Elm Street, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 20th day of October, 2014.



Michael J. Jones
Mayor

ATTEST:



Sharon Bennett Hagan
City Clerk

Roll Call Vote

Ayes: Councilman Prendiville
Councilman Rutledge
Councilman Saline
Mayor Gresk
Councilman Scalzo
Councilman Suess

Nays: None
Absent: Councilwoman Pacino Sanguinetti

Motion Carried Unanimously

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (West Elm -)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 23rd day of Sept, 2014, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Douglas Thompson ("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, Douglas Thompson (hereinafter "Owner"), the owner of the premises located at 629 W. Elm 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.) Douglas Thompson are the owners of property located at 629 W. Elm -, 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

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.

6
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.

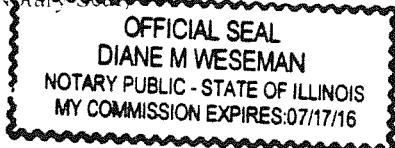
Owner
Douglas M. Thompson, Trustee

Douglas M. Thompson Living Trust
Owner

Subscribed and sworn to before me this 23rd day of September, 20 14.

Diane M. Wese Notary Public

(Notary Seal)



6
Mayor, City of Wheaton

Michael J. Gross

Attested by:

Aaron Bennett
City Clerk

EXHIBIT A

Legal Description:

LOT 8 (EXCEPT THE EAST 20 FEET THEREOF) AS MEASURED ON THE NORTH LINE AND ON THE SOUTH LINE IN SNYDER'S SUBDIVISION UNIT 2, BEING A SUBDIVISION OF PART OF LOT 25 IN COUNTY CLERK'S ASSESSMENT SUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF WARRENVILLE ROAD AND NORTH OF THE CENTERLINE OF UNION DRAINAGE DITCH NO. 1, ACCORDING TO THE PLAT OF SAID SNYDER'S SUBDIVISION RECORDED JULY 2, 1955, AS DOCUMENT 763546, IN DUPAGE COUNTY, ILLINOIS.

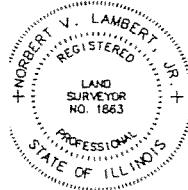
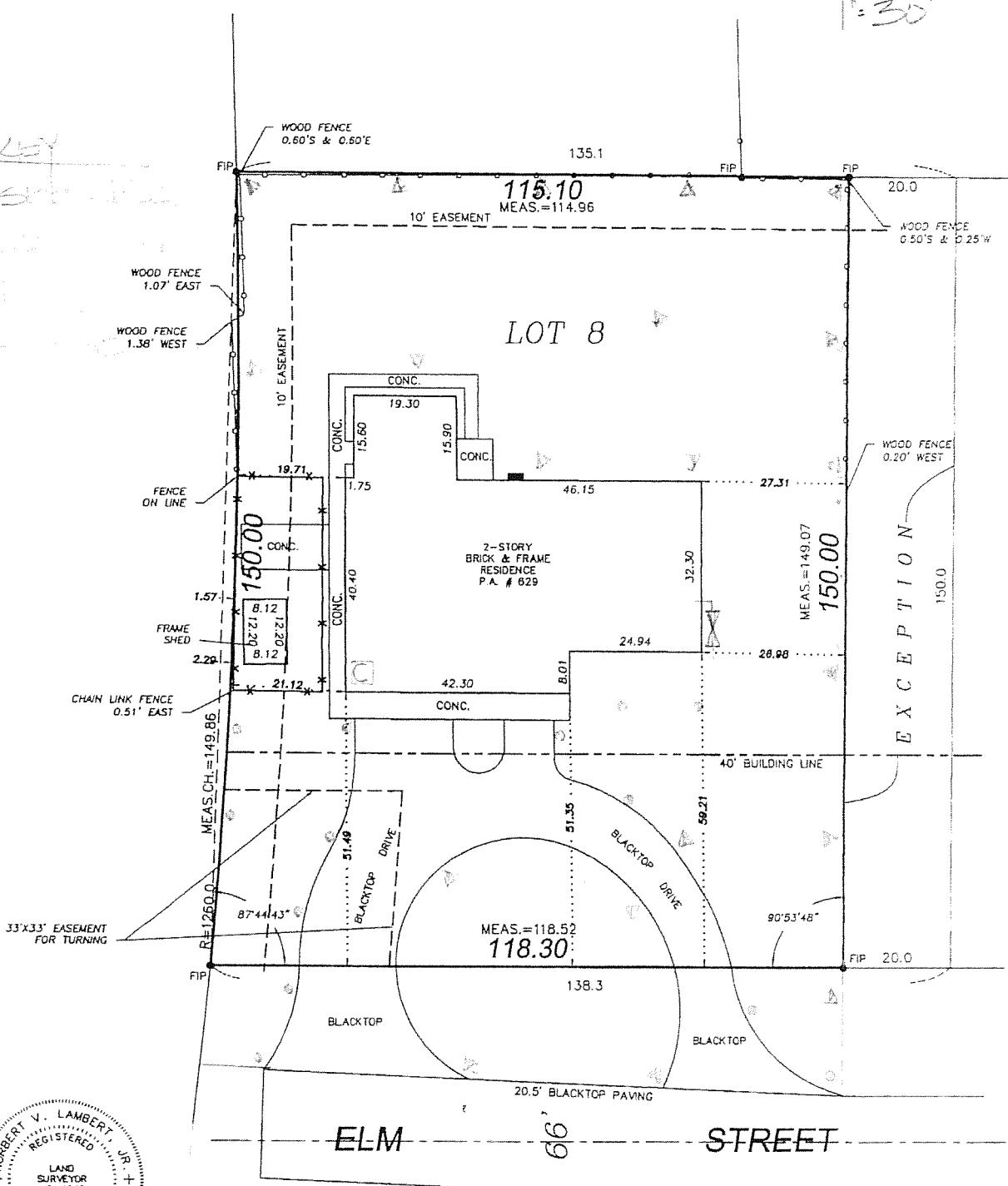
429 W. Elm Street Wheaton, IL 60187
address

P.I.N. 05-20-216-005

PLAT OF SURVEY

LOT 8 (EXCEPT THE EAST 20 FEET THEREOF) AS MEASURED ON THE NORTH LINE AND ON THE SOUTH LINE IN SNYDER'S SUBDIVISION UNIT 2, BEING A SUBDIVISION OF PART OF LOT 25 IN COUNTY CLERK'S ASSESSMENT SUBDIVISION OF PART OF THE EAST 1/2 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF WARRENVILLE ROAD AND NORTH OF THE CENTERLINE OF UNION DRAINAGE DITCH NO. 1, ACCORDING TO THE PLAT OF SAID SNYDER'S SUBDIVISION RECORDED JULY 2, 1955, AS DOCUMENT 763546, IN DUPAGE COUNTY, ILLINOIS.

SCALE: 1" = $\frac{1}{10}$ M.



STATE OF ILLINOIS }
COUNTY OF DU PAGE } S.S.

IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR,
SURVEYED THE PROPERTY DESCRIBED ABOVE AND THAT
ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID
PROPERTY.

PROFESSIONAL SERVICE CONFORMS TO THE CURRENT
GDS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.
V UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS,
27TH DAY OF JULY AD 2014.

THE DAY OF JULY, A.D., 2014

Nelson Franklin
DIS LAND SURVEYOR NO. 1853. LICENSE EXPIRED

DIS LAND SURVEYOR NO. 1853, LICENSE EXPIRES 11/30/14
DIS DESIGN FIRM NO. 184-006511

ORDERED BY: SCALZO, TODD-ATTY

ORDER NO. 14 E.070 FILE NO. 140400

LAMBERT & ASSOCIATES

