

**RESOLUTION R-64-14**

**A RESOLUTION AUTHORIZING THE EXECUTION  
OF A CERTAIN CONSTRUCTION, USE, AND  
INDEMNIFICATION AGREEMENT  
(1315 Aurora Way)**

**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 22, 2014, between the City of Wheaton and the Bernard and Gretta Tamling Family Trust, dated October 10, 2012 for 1315 Aurora Way, Wheaton, Illinois, attached hereto as Exhibit 1.

**ADOPTED** this 20<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Michael J. Jones  
Mayor

ATTEST:

Shawn Bonnett-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 (Aurora Way)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 22 day of Sept. 2014, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and BERNARD AND GRETCH TAMELING FAMILY TRUST, DATED October 10, 2012 ("Owner").

"BERNARD AND GRETCH TAMELING FAMILY TRUST, DATED October 10, 2012"  
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

a) BERNARD AND GRETCH TAMELING FAMILY TRUST, DATED October 10, 2012  
 WHEREAS, 1 (hereinafter "Owner"), the owner of the premises located at 1315 Aurora Way, 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.

"BERNARD AND GRETCH TAMELING FAMILY TRUST, DATED October 10, 2012"  
 2.) 1 are the owners of property located at 1315 Aurora Way 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.

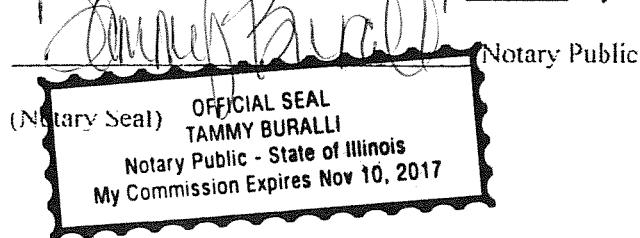
11.) The Owners obligations under this Agreement shall be joint and several.

12.) This Agreement shall be binding on the Owners, their successors, heirs and assigns.

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.

Bennet Remeling Trustee  
Owner  
Heather Remeling, Trustee  
Owner

Subscribed and sworn to before me this 22 day of Sept, 2014.



Michael J. Gray  
Mayor, City of Wheaton

Attested by:

Shawn Bennett Hagen  
City Clerk

EXHIBIT A

Legal Description:

THAT PART OF LOT 22 IN FIRST ADDITION TO HADLEY ESTATES, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1944 AS DOCUMENT 470321, LYING SOUTHWESTERLY OF A LINE DESCRIBED AS BEING IN THE SOUTHEASTERLY, OR REAR LINE OF SAID LOT AT A POINT 133.45 FEET SOUTHWESTERLY OF THE SOUTHEASTERLY CORNER THEREOF AND RUNNING IN A NORTHWESTERLY DIRECTION, PARALLEL TO THE NORTHEASTERLY LINE OF SAID LOT, TO ITS POINT OF INTERSECTION WITH THE NORTHWESTERLY, OR FRONT LINE OF SAID LOT, IN DUPAGE COUNTY, ILLINOIS.

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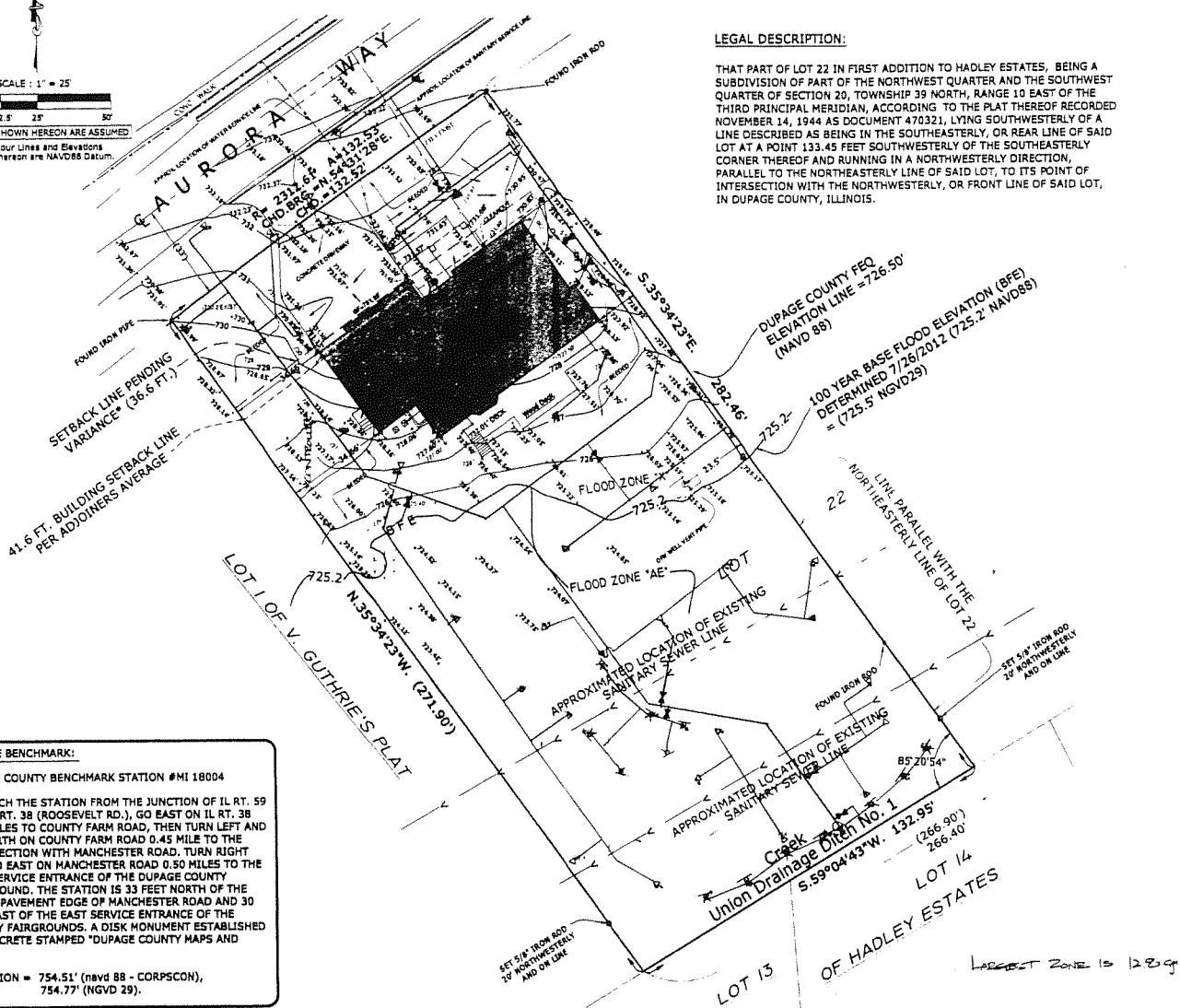
1315 Aurora Way      Wheaton, IL 60187  
address

P.I.N. 05-20-111-001

## "EXHIBIT B"

# FINAL GRADING PLAN

SCALE: 1" = 25'  
0 12.5 25 37  
ARINGS SHOWN HEREON ARE ASSUMED  
Contour Lines and Elevations  
Shown herein are NAVD88 Datum.



### LEGAL DESCRIPTION:

THAT PART OF LOT 22 IN FIRST ADDITION TO HADLEY ESTATES, BEING A SUBDIVISION OF PART OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 14, 1944 AS DOCUMENT 470321, LYING SOUTHWESTERLY OF A LINE DESCRIBED AS BEING IN THE SOUTHEASTERLY, OR REAR LINE OF SAID LOT AT A POINT 133.45 FEET SOUTHWESTERLY OF THE SOUTHEASTERLY CORNER THEREOF AND RUNNING IN A NORTHWESTERLY DIRECTION, PARALLEL TO THE NORTHEASTERLY LINE OF SAID LOT, TO ITS POINT OF INTERSECTION WITH THE NORTHWESTERLY, OR FRONT LINE OF SAID LOT, IN DUPAGE COUNTY, ILLINOIS.

DUPAGE COUNTY FEO  
ELEVATION LINE = 726.50'  
(NAVD 88)

100 YEAR BASE FLOOD ELEVATION (BFE)  
DETERMINED 7/25/2012 (725.2' NAVD88)  
= (725.5' NGVD29)

LINE PARALLEL WITH THE  
NORTHEASTERLY LINE OF LOT 22  
5 FT 5" IRON ROD  
2/3 NORTHWESTERLY  
AND ON LINE

LOT 13  
Crack  
Union Drainage Ditch No. 1  
5.59'04"43" W. 132.95'  
(266.90')  
(266.40')  
LOT 14  
OF HADLEY ESTATES  
LARGEST ZONE IS 128.9

STATE OF ILLINOIS )  
COUNTY OF KENDALL ) 55

I, CHARLES S. MARSHALL, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PLAT SHOWN HEREON, BEING COMPLETED IN THE FIELD ON 7/14/2014, IS A CORRECT REPRESENTATION OF A SURVEY PERFORMED AT AND UNDER MY DIRECTION.

THIS SURVEY MEETS THE MINIMUM TECHNICAL STANDARDS FOR LAND BOUNDARY SURVEYS SET FORTH BY ILLINOIS STATE LAW.

I ALSO CERTIFY THAT THE AS-CONSTRUCTED GRADING COMPLIES WITH THE APPROVED GRADING PLAN.

ALL DIMENSIONS ARE IN FEET AND DECIMAL PARTS THEREOF.

GIVEN UNDER MY HAND AND SEAL THIS 4TH DAY OF SEPTEMBER, A.D. 2014.



CHARLES S. MARSHALL  
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3377  
LICENSE EXPIRED 11/30/2014

DATED	REVISIONS:
9/4/2014	MISCELLANEOUS REVISIONS PER CITY ENGINEER COMMENTS DATED AUGUST 8, 2014

PREPARED BY:  
**ASM**  
ASM Consultants, Inc.  
PO Box 7, Plano, IL 60545  
Tel (530) 273-2500 Fax (530) 273-2600  
advanced@advct.com  
Professional Design Firm #184-006014 expires 4/30/2015

PREPARED FOR:  
**Magnolia**  
Custom Homes  
20 Denada Square West  
Suite 206  
Wheaton, IL 60189

SITE INFORMATION:  
1315 AURORA WAY  
WHEATON, IL 60189

PROJECT NO.:	727008FG
PROJECT NAME:	1315 AURORA WAY
DATE OF SURVEY:	7/14/2014
DATE OF DRAWING:	9/4/2014
DRAWN BY:	PS
CHECKED BY:	CSH
FINAL GRADING PLAN	

