

RESOLUTION R-2018-110

**A RESOLUTION APPROVING THE
FINAL PLAT OF CLINE'S HAWTHORNE ESTATES SUBDIVISION**

WHEREAS, the Owner has submitted a plat of subdivision of the vacant property located on the east side Hawthorne Lane between 1561 and 1671 Hawthorne Lane to the City for approval (the property is described on Exhibit A attached to this resolution); and the Wheaton City staff has recommended that the plat of subdivision be approved.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Final Plat of Cline's Hawthorne Estates Subdivision, as prepared by Timothy B. Martinek, an Illinois Professional Land Surveyor, dated November 19, 2018 is hereby approved.

IT IS FURTHER RESOLVED that the Mayor is hereby authorized to sign, and the City Clerk is authorized and directed to attest, this resolution of approval and the Final Plat of Subdivision of Cline's Hawthorne Estates incorporated herein as Exhibit B.

ADOPTED this 3rd day of December 2018.

er 2018.
Mayor 

ATTEST:

Shawn Bennett-Hagan
City Clerk

Roll Call Vote

Ayes: Councilman Suess
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo

Nays: None
Absent: None

EXHIBIT A

Legal Description

Cline's Hawthorne Estates Subdivision

Vacant property

PARCEL 1: THE WESTERLY 275.0 FEET (AS MEASURED FROM THE EAST LINE OF HAWTHORNE LANE) OF THE FOLLOWING DESCRIBED TRACT:

LOTS 5, 4 AND 3, AND THE NORTHERLY 22.5 FEET OF LOT 2 OF OWNER'S PLAT OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 26, 1921 AS DOCUMENT 146698 (EXCEPT FROM SAID LOTS 2, 3, 4 AND 5 THE WESTERLY 49.5 FEET KNOWN AND USED AS HAWTHORNE LANE), TOGETHER WITH THAT PART OF SAID WEST HALF OF THE SOUTHWEST QUARTER DESCRIBED BY BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 42 FEET TO A LINE DRAWN PARALLEL WITH AND 275.0 FEET EAST OF THE EAST LINE OF HAWTHORNE LANE; THENCE SOUTHERLY ALONG SAID PARALLEL LINE, 22.5 FEET; THENCE WESTERLY PARALLEL WITH SAID SOUTH LINE OF LOT 3, 42 FEET TO THE EAST LINE OF SAID LOT 2; THENCE NORTHERLY ALONG SAID EAST LINE, 22.5 FEET TO THE POINT OF BEGINNING, (EXCEPT THE SOUTH 440.06 FEET THEREOF), IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT MADE BY HORACE ORTON WETMORE AND EWING W. GRAHAM AND MARGARET P. GRAHAM, HIS WIFE, CLARIS BRICKER (CLARICE A. BRICKER), THE LIVE STOCK NATIONAL BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NO. 13312 DATED NOVEMBER 5, 1952, CHICAGO CITY BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT KNOWN AS TRUST NO. 5832 OF WHICH JAMES W. WATT AND DOROTHY E. WATT, HIS WIFE, ARE BENEFICIARIES, ARTHUR T. HELLVER AND MARY A. TABER DATED JUNE 11, 1960 AND RECORDED ON JUNE 13, 1960 AS DOCUMENT 968048 FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THAT PARCEL OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 21; THENCE NORTH ALONG THE SECTION LINE TO A POINT OF THE WEST LINE OF SECTION 21, 1,135 FEET SOUTH OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 21; THENCE EAST 75 LINKS, THENCE SOUTH PARALLEL TO THE WEST LINE OF SECTION 21, TO THE SOUTH LINE OF SECTION 21; THENCE WEST 75 LINKS TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-21-302-033

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CLINE'S HAWTHORNE ESTATES SUBDIVISION
DEVELOPMENT / SUBDIVISION IMPROVEMENT
AGREEMENT

THIS AGREEMENT made and entered into this 19 day of NOVEMBER, 2018 by and between the **City of Wheaton**, an Illinois Municipal Corporation, and having its office at 303 West Wesley Street, Wheaton, Illinois hereinafter called "City" and REBECCA S. CLINE, an ~~Corporation; (Partnership, Limited Liability Company)~~ hereinafter referred to as "Developer".

WITNESSTH:

WHEREAS, the Developer has fee simple title in itself to the real estate described as follows, and herein after referred to as 05-21-302-033 "Property":

PARCEL 1:

THE WESTERLY 275.0 FEET (AS MEASURED FROM THE EAST LINE OF HAWTHORNE LANE) OF THE FOLLOWING DESCRIBED TRACT:

LOTS 5, 4, 3, AND THE NORTHERLY 22.5 FEET OF LOT 2 OF OWNER'S PLAT OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 26, 1920 AS DOCUMENT 146698 (EXCEPT FROM SAID LOTS 2, 3, 4, AND 5 THE WESTERLY 49.5 FEET KNOWN AND USED AS HAWTHORNE LANE), TOGETHER WITH THAT PART OF SAID WEST HALF OF THE SOUTHWEST QUARTER DESCRIBED BY BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE EASTERLY ALONG THE SOUTH LINE OF SAID LOT 3 A DISTANCE OF 42 FEET TO A LINE DRAWN PARALLEL WITH AND 275.0 FEET EAST OF THE EAST LINE OF HAWTHORNE LANE; THENCE SOUTHERLY ALONG SAID PARALLEL LINE 22.5 FEET; THENCE WESTERLY PARALLEL WITH SAID SOUTH LINE OF LOT 3, A DISTANCE OF 42 FEET TO THE EAST LINE OF SAID LOT 2; THENCE NORTHERLY ALONG SAID EAST LINE 22.5 FEET TO THE POINT OF BEGINNING, (EXCEPT THE SOUTH 440.06 FEET THEREOF), IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY EASEMENT MADE BY HORACE ORTON WETMORE AND EWING W. GRAHAM AND MARGARET P. GRAHAM, HIS WIFE, CLAIRE BRICKER (CLARICE A. BRICKER), THE LIVE STOCK NATIONAL BANK OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT NO. 13312 DATED NOVEMBER 5, 1952, CHICAGO CITY BANK AND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT

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KNOWN AS TRUST NO. 5832 OF WHICH JAMES W. WATT AND DOROTHY E. WATT, HIS WIFE, ARE BENEFICIARIES, ARTHUR T. HELVAR AND MARY A. TABER DATED JUNE 11, 1960 AND RECORDED ON JUNE 13, 1960 AS DOCUMENT UMBER 968048 FOR INGRESS AND EGRESS OVER THE FOLLOWING DESCRIBED LAND:

THAT PART OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10 EAST, OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 21; THENCE NORTH ALONG THE SECTION LINE TO A POINT ON THE WEST LINE OF SECTION 21, A DISTANCE OF 1,135 FEET SOUTH OF THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 21; THENCE EAST 75 LINKS; THENCE SOUTH PARALLEL TO THE WEST LINE OF SECTION 21, TO THE SOUTH LINE OF SAID SECTION 21; THENCE WEST 75 LINKS TO THE POINT OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

COMMON ADDRESS: 1587 HAWTHORNE LANE, WHEATON, ILLINOIS

WHEREAS, the Developer has submitted a final plat for a subdivision of the Property by Plat of Subdivision approved by the Corporate Authorities of the City by Resolution Number R-2018 - 110 on date 12/3/18; and

WHEREAS, the City has approved said subdivision plat strictly subject to the completion of the public and required improvements in accordance with its ordinances, resolutions, good engineering practices, and this Agreement, and as a condition to the issuance of occupancy permits for any buildings to be constructed on the property.

NOW THEREFORE, City and Developer agree as follows:

REQUIRED IMPROVEMENTS

1. The Developer at its sole cost and expense shall furnish all necessary materials, labor, and equipment to construct and complete the public improvements, stormwater management improvements, and other required improvements, collectively hereinafter "Required Improvements", in conformance with the annexation agreement, the Subdivision Control Ordinance of the City of Wheaton (Chapter 62 of the Wheaton City Code), this Agreement, good engineering practices, and any other requirements as may be set forth in ordinances or resolutions approving the subdivision. The Required Improvements shall include: survey monuments, sanitary mains and services, water mains and services, approved grading, including inspection, testing, construction supervision and final engineering record drawings. All the

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Required Improvements shall be in accordance with the standards, specifications, and requirements of the City of Wheaton. Such Required Improvements are purportedly indicated by the plans and specifications approved by the City of Wheaton, shown on Exhibit A attached hereto, which exhibit has been prepared by Engineering Resources Associates Inc., who are registered professional engineers. Any Required Improvement required by ordinance, resolution or this Agreement, but omitted from Exhibit A, shall be constructed and completed as required. All public or private utility lines and services to be placed under the street shall be installed prior to paving.

DEVELOPMENT SECURITY FOR REQUIRED IMPROVEMENTS

2. Attached hereto and incorporated herein as if fully set forth as Exhibit B, is a complete cost estimate prepared by a professional engineer, for the construction and completion of the Required Improvements. Prior to the execution of this Agreement, the Developer shall deposit 125% of the engineer's cost estimate for the Required Improvements, including all final lot staking and survey monuments, by cash. Until said cash escrow (Exhibit "C") or letter of credit is established this agreement shall be ineffective and no permits shall issue. Any escrow agent shall be deemed a party to this Agreement.

Any letter of credit posted to guarantee the Required Improvements shall be subject to the approval of the City Attorney and Director of Engineering, with the City being the sole beneficiary of the letter of credit for purposes of constructing and completing the Required Improvements. Any amounts drawn by the City from the escrow or letter of credit, exceeding the cost of the Required Improvements, shall be returned: in the case of a cash escrow exclusively to the Developer in the case of a cash escrow held by the City; exclusively to the escrow agent in the case of a third party escrow; or in the case of the letter of credit exclusively to the issuer.

CONSTRUCTION OBSERVATIONS

3. All work on the Required Improvements shall be subject to periodic observations by the Director of Engineering or his designated representative during the course of construction. The Director of Engineering or his designated representative shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the Developer as necessary in order to make his

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observations. The Director of Engineering or his designated representative is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Required Improvements and their construction. The observations provided for in this section are not intended to supplement, modify, or eliminate the responsibility of the developer to use and provide, at his own expense, professional engineering and inspection services of a private consulting engineer or firm.

OBSERVATION FEES

4. The Developer shall pay the City a fee representing 2% of the total cost of the Required Improvements as a plan review and construction observation fee, as required by Ordinance. Payment shall be made within ten (10) days of the execution of this Agreement.

INSURANCE

5. Prior to commencement of any work provided for herein, the Developer and its contractors shall furnish the City with certificates of insurance providing for workmen's compensation and commercial liability insurance, including occupational disease coverage and comprehensive liability to cover said work as follows:

- (a) Workmen's compensation (statutory limits)
- (b) Comprehensive Commercial liability coverage, by one or more policies, with combined limits of 1,000,000/ 3,000,000, including collapse and explosion coverage.
- (c) Vehicle liability coverage with limits of \$500,000/ 1,000,000.
- (d) Minimum liability coverage of One Hundred Thousand (\$100,000) Dollars for property damage.

The foregoing coverages shall be the required minimums.

Except for the Workmen's Compensation coverage, all certificates of insurance shall name the City as an additionally insured with respect to the provisions of said policy related to the Required Improvements. All policies of insurance shall be occurrence policies. Claims made policies are unacceptable. All policies shall be primary and no policy shall require contribution from the City's insurance. All carriers providing insurance shall be authorized to do business in the State of Illinois and

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shall be subject to the reasonable approval of the City Attorney. Certificates of insurance for the foregoing coverage shall be filed with the Director of Engineering prior to the issuance of any permits.

In addition, by its execution of this Agreement, the Developer hereby agrees to the greatest extent allowable under Illinois law to defend, indemnify and hold harmless the City, its elected and appointed officials and employees, agents and assigns and each of them, against any and all claims, actions, losses, damages, attorney's fees or expenses which they may sustain or become liable for on account of injury or death of persons, or damage to or destruction of property resulting from acts or omissions in the performance of work related to the Required Improvements by the Developer or his contractors or any employee or subcontractor of any of them, or by the City its agents or employees in furtherance of construction of the Required Improvements, or due to the condition of the premises or other property of the Developer upon, about, or in connection with which any work incident to the performance of the terms of this Agreement.

ACCEPTANCE AND GUARANTEE

6. The Developer guarantees that the design, workmanship and material furnished in the Required Improvements will be designed, furnished and performed in accordance with well known established practice and standards recognized by professional engineers and in the construction trades. All such Required Improvements shall be new and of the best grade of their respective kinds for the purpose. All materials and workmanship will be guaranteed by the Developer and his escrow agent for a period of one year from the date of final acceptance by the City, except for those projects which contain special environmental management areas, such as wetlands and/or floodplains, or naturalized detention facilities that may contain longer guarantee periods as stipulated by the appropriate ordinance or permitting agency.

Prior to requesting final acceptance, the Developer shall provide the City with documentation and certification prepared by the Developer's registered design professional that the Required Improvements material and work meets the plans and specifications. The Developer shall cause its registered design professional to correct the drawings to show work as constructed, including stormwater detention volume

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summaries, and shall deliver a set of record drawings to the City. The City shall then inspect the Required Improvements and provide a list of deficiencies to the Developer.

The Developer shall cause all deficiencies to be repaired and/or corrected within 60 days of receipt of the list of deficiencies or the City shall have the right to make or cause the repairs to be made and draw on the Irrevocable Letter of Credit, described in Paragraph 2 of this Agreement, to insure compliance with this Agreement. Failure to complete the deficiencies within 60 days may also require a re-inspection by the City at the Developer's expense. Any re-inspections by the City shall be paid for by the Developer based on time and material costs as actually incurred by the City.

The City shall retain ten percent (10%) of the total amount of the development's security for the Required Improvements for one year after final acceptance of the Required Improvements to secure the Developer's guarantee that the workmanship and materials furnished are first class and as above provided, and that the Required Improvements are and will remain in good and sound condition for and during the guarantee period.

The Developer shall make or cause to be made at its own expense, any and all repairs that may become necessary by virtue of this guarantee, and shall leave the Required Improvements in good and sound condition, satisfactory to the Director of Engineering, at the expiration of the guarantee. In said event, and at the expiration of such guarantee period, the amount retained as a guarantee, less any and all necessary expenses which may have been incurred by the City in connection with the maintenance of the Required Improvements, shall be paid over, or released as the case may be, in conformance with Paragraph 2 of this Agreement.

Further, if during said guarantee period, the improvement shall in the opinion of the Director of Engineering, require any repairs or renewals, the Developer shall upon notification by the Director of Engineering of necessity for such repair or renewals make such repairs or renewals, at its own cost and expense. Should the Developer fail to make such repairs, renewals, within a reasonable time after notification as herein provided, the City may cause such work to be done, either by contract or otherwise, and the entire cost and expense thereof shall be paid and deducted from the amount retained as a

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guarantee. Should such cost and expense exceed the amount retained or remaining in the guarantee fund, the Developer shall pay such amount of excess to the City.

TIME LIMIT

7. The Developer shall cause said Required Improvements as herein described to be completed within five (5) years of the date of recording the final plat. If the required improvements are not completed within the time prescribed herein, then the City shall have the right, but not the obligation to complete said Required Improvements in whole or in part as determined by the City, and draw on the letter of credit as provided in Paragraph 2 of this Agreement, to cover the expenses incurred by the City to complete the Required Improvements.

ORDINANCES

8. Notwithstanding this Improvement Agreement, in the event a valid ordinance of the City was overlooked at the date hereof, the Developer upon notice from the City and prior to acceptance of the subdivision shall install or perform the improvement or work so required; further, any law or ordinance which shall be passed after the date of this Agreement, which is a law or ordinance directed to the health, safety or welfare of the public, shall apply to the Property as of the effective date of said law or ordinance.

LIEN WAIVERS

9. The Developer shall furnish the City with a contractor's affidavit and lien waivers showing all subcontractors and material suppliers and all persons who have done work, or have furnished material under this Agreement, and are entitled to a lien therefore under any laws of the State of Illinois, have been fully paid.

OCCUPANCY PERMITS

10. It is agreed that no occupancy permits shall be issued for any building in said subdivision until all Required Improvements required by this Agreement have been completed, except for final road surface course, public sidewalks, and parkway trees. Parkway trees shall be installed within six months from the issuance of an occupancy permit, as weather permits.

MAINTENANCE

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11. The Developer shall be responsible for the maintenance of the required improvements until such time as they are accepted by the City. This maintenance shall include routine maintenance such as snow removal, pruning and watering of parkway trees, landscaping and street sweeping as well as emergency maintenance such as sewer blockages. If the Developer requests and the City elects, at the time of the execution of this Agreement, to have the City perform this maintenance, the Developer hereby agree to reimburse the City its cost for the performance of this maintenance upon the receipt of an invoice from the City setting forth said expense of the City. Any payments not made pursuant to this requirement may be taken by the City, in its sole discretion, from the security posted in accordance with Paragraph 2 of this Agreement. If a deduction taken by the City from the security results in a shortfall of the required amount of the security the Developer shall replenish the security in the amount of the deficiency within seven calendar days of the City's request. Any failure of the Developer to replenish the security within seven days of the City's request shall constitute a material breach of this Agreement authorizing the City to assert control over the deposited security.

TEMPORARY CONSTRUCTION EASEMENT

12. The Developer, by execution of this Agreement, grants the City a temporary easement which authorizes, but does not obligate, the City to access the Property to perform or complete any act or work the Director of Engineering is required to do by the Stormwater Management Certification or applicable ordinances which may include; (i) the construction of any Required Improvements; (ii) restoration and/or Mitigation of natural areas, Wetlands and Buffers; (iii) installation and Maintenance of soil erosion control; (iv) planting or removal of vegetation; and (v) any other maintenance or monitoring. The term for such easements shall be of sufficient duration as necessary to allow the City to perform and satisfactorily complete any activity or work for which the Developer/certificate holder has posted security under this Agreement; however, such term shall not exceed final acceptance of the subdivision by the City.

BINDING EFFECT

13. This Agreement shall be binding upon all parties, their successors and assigns and grantees.

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INTEGRATION

14. This Agreement cancels and supersedes any agreements heretofore entered into between the parties which are in conflict with the provision hereof. All aspects of the parties negotiations related to this Agreement are fully integrated herein and there are no other understandings or agreements, oral or written, related to the provisions of this Agreement or any ordinances or resolutions adopted in conjunction herewith.

AMENDMENTS

15. Any amendments to this Agreement requested by the developer, shall be in writing and approved by the City. City Ordinance provisions in effect at the time of the request for an amendment shall apply.

NO THIRD PARTY BENEFICIARIES

16. There are no third party beneficiaries of this Agreement.

CITY'S LITIGATION EXPENSES

17. Should the Developer bring any claim or litigation against the City or any of its employees in their professional or personal capacity in consequence of this Agreement, or should the City bring any action to enforce all or any portion of this Agreement, and should the Developer lose all or a portion of said litigation, the Developer shall reimburse the City or its employees their reasonable attorneys fees, expert witness fees and costs: in the full amount if it loses the whole of the litigation or; in a case where it loses a portion of the litigation those reasonable attorneys fees, expert witness fees and costs attributable to that portion of the litigation.

EXCLUSIVE JURISDICTION

18. Exclusive jurisdiction for any litigation related to this Agreement shall be in the 18th Judicial Court, DuPage County, Illinois.

(Signatures are on following page of Agreement)

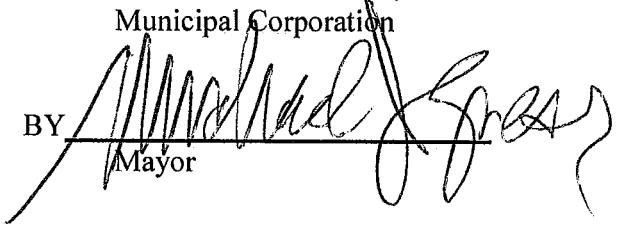
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IN WITNESS WHEREOF, the City has caused this agreement to be executed by its Mayor and attested by its Clerk and the Developer has executed this agreement, all as of the date first above written.

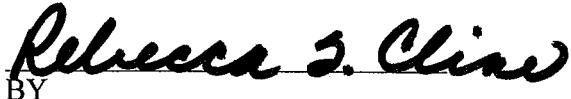
CITY OF WHEATON, an Illinois
Municipal Corporation

BY 
Mayor

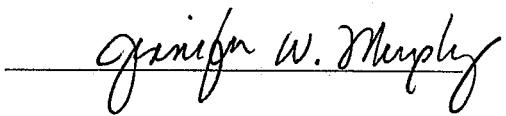
ATTEST:

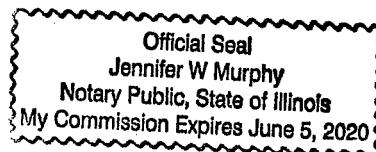

City Clerk

DEVELOPER:


BY

ATTEST:





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