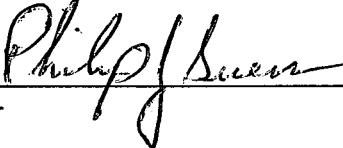


RESOLUTION R-2019-38

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(317 North Ellis Avenue)

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 April 10, 2019, between the City of Wheaton and the Christine Borwankar Revocable Trust for 317 North Ellis Avenue, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 3rd day of June 2019.



Philip Suess
Mayor

ATTEST:



Sean Bennett
City Clerk

	<u>Roll Call Vote</u>
Ayes:	Councilman Barbier Councilwoman Bray-Parker Councilwoman Fitch Mayor Suess Councilman Rutledge Councilman Scalzo
Nays:	None
Absent:	None

Motion Carried Unanimously

○

○

○

201900561

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (317 N ELLIS AVE)
Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 10 day of APRIL, 2019, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Christine Borwanker ("Owner").

Christine Borwanker revokable TRUST
WITNESSETH dated Feb 12, 2010

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, Christine Borwanker revokable (hereinafter "Owner"), the owner of the premises located at 317 N ELLIS AVE TRUST dated Feb 12, 2010, 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.) Christine Borwanker revokable TRUST dated Feb 12, 2010 are the owners of property located at 317 N ELLIS, 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 317 N. ELLIS AVE

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.

EXHIBIT A

Legal Description:

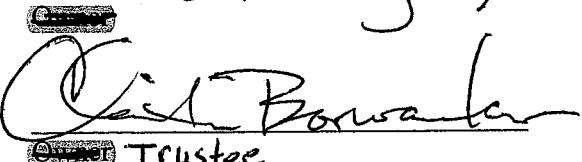
The South 82.50 Feet of The North 165 Feet of
Lot 4 in Block 6 in County Clerks Assessment
Division of The South Half of The Northeast Quarter
of Section 17 Township 39 north range 10 east
of The Third principal meridian in DuPage
County Illinois

317 N ELLIS AVE Wheaton, IL 60187
address

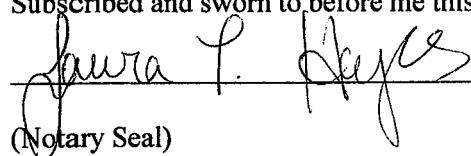
PIN: 05-17-229-002

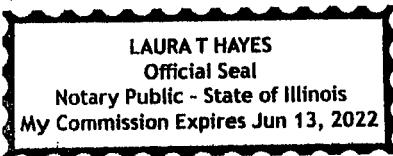
IN WITNESS WHEREOF, the Corporate authorities and the Owners have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.

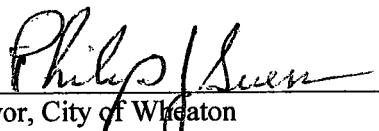
Christine Borwankar Revocable Trust
dated February 12, 2010


Christine Borwankar
Trustee

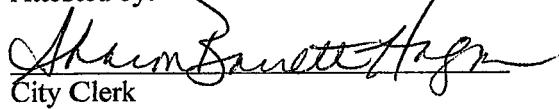
Subscribed and sworn to before me this 10 day of April, 20 19.


Laura T. Hayes Notary Public
(Notary Seal)




Philip J. Luen
Mayor, City of Wheaton

Attested by:


Karen Baunett-Hayes
City Clerk

PLAT OF SURVEY

EXHIBIT B

317 ELLIS AVENUE:

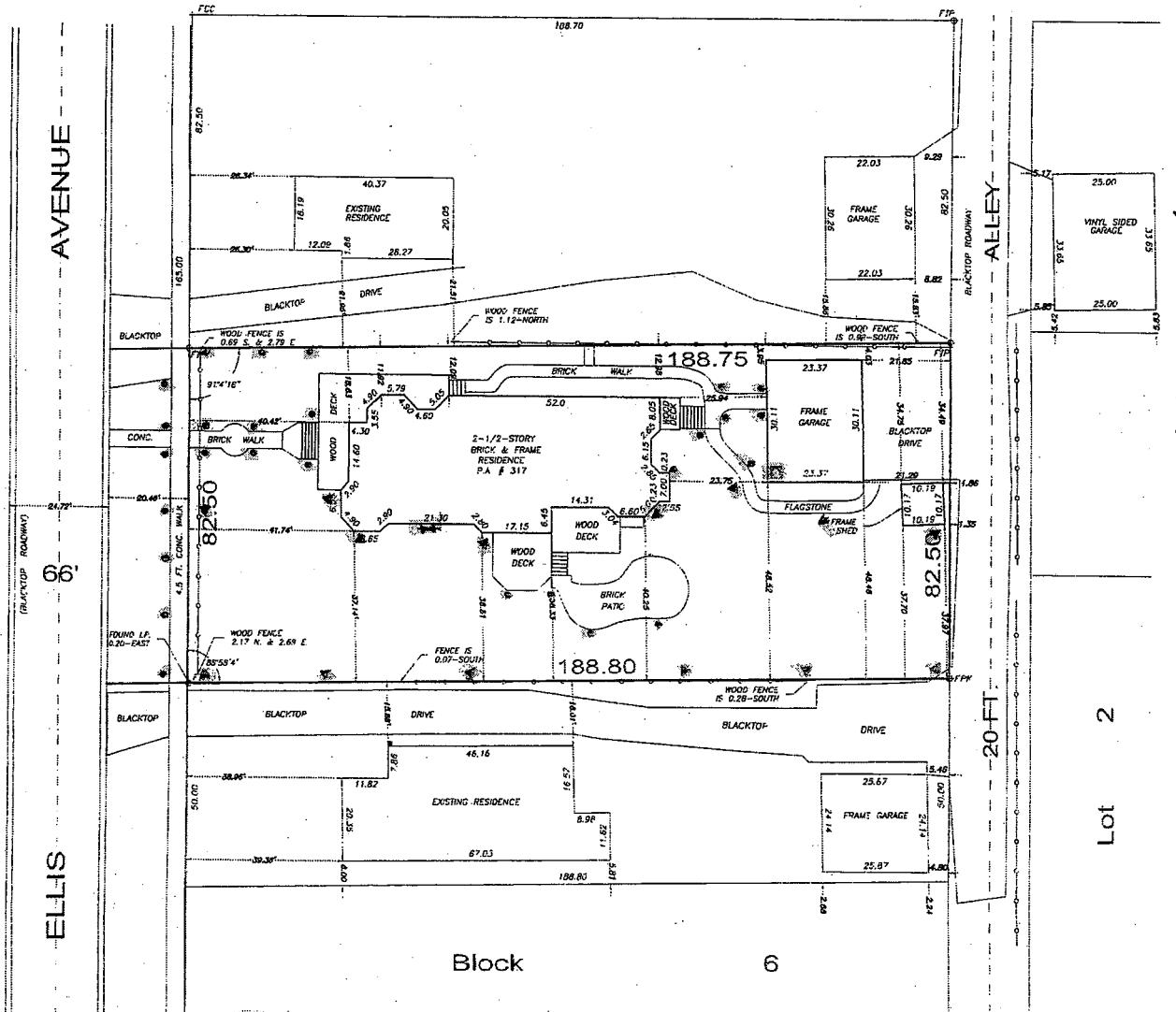
P.I.N. # 05-17-229-002

AREA: 0.36 ACRES

THE SOUTH 82.50 FEET OF THE NORTH 165 FEET OF LOT 4 IN BLOCK 6 IN COUNTY CLERK'S ASSESSMENT DIVISION OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

Scale 1" = 20'

UNION AVENUE



Block 9

SPRINKLER KEY

- △ SPRINKLER
- SPRINKLER
- TOWER
- ★ 1" P.D. VALVE

NOTES:

- 1) LARGEST ZONE USES 12 GPM
- 2) NO PIPES, HEADS OR VALVES WITH 5' OF B. BOX



STATE OF ILLINOIS
COUNTY OF DU PAGE > S.S.
THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR,
HAVE SURVEYED THE PROPERTY LOCATED AS SHOWN AND THAT
THE HEREIN PLS. IS A CORRECT REPRESENTATION OF SAID
SURVEY. FIELD WORK COMPLETION DATE: 03/15/2018.
THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT
ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.
GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS.
THE 21ST DAY OF MAY, A.D. 2018.

Robert J. Lambert, Jr.

ILLINOIS LAND SURVEYOR NO. 1863; LICENSE EXPIRES 11/30/18
KELLOG DESIGN FIRM NO. 184-007280
REFER TO DEED OR GUARANTEE POLICY FOR RESTRICTIONS NOT SHOWN
ON SURVEY
ALL DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
COMPARE ALL POINTS BEFORE BUILDING AND REPORT ANY APPARENT
DISCREPANCIES TO THE SURVEYOR.

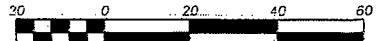
• = found iron stake

○ = set iron stake

ORDERED BY: KEAY & COSTELLO-ATYCO ORDER NO. 98-4-32 FILE NO. 05-0324

18 E 35

LAND SURVEYING AND CIVIL ENGINEERING	
LAMBERT & ASSOCIATES	LAND TECHNOLOGY
955 W. LIBERTY DR. WHEATON, IL 60187 P: 630-553-6331 F: 630-553-6396	3922 W. MAIN ST MCHENRY, IL 60050 P: 815-363-9200 F: 815-363-9223



Scale 1" = 20'

