

RESOLUTION R-2019-86

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
LICENSE AGREEMENT
(520 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 License Agreement dated September 10, 2019, between the City of Wheaton and Sean and Katlyn McDaniel of 520 Aurora Way, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 16th day of September 2019.



Philip J. Suess
Mayor

ATTEST:



Sean J. Bennett
City Clerk

Roll Call Vote

Ayes: Councilwoman Fitch
Mayor Pro Tem Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker

Nays: None
Absent: Mayor Suess
Councilwoman Robbins

Motion Carried Unanimously

**CONSTRUCTION, USE AND LICENSE AGREEMENT
(520 Aurora Way)**

THIS CONSTRUCTION, USE AND LICENSE AGREEMENT, is made and entered into this 10th day of Sept. 2019, by and between the **City of Wheaton, Illinois**, an Illinois municipal corporation, located in DuPage County, State of Illinois, and **Sean and Katlyn McDaniel** who resides at 520 Aurora Way, Wheaton, Illinois.

WITNESSETH

WHEREAS, the City of Wheaton, Illinois ("City") is in title and control of an unimproved public street right-of-way ("Street"), within the City limits, a portion of which is contiguous to the real property located at 520 Aurora Way, Wheaton, Illinois, which is more fully shown on **Exhibit A**, attached hereto and incorporated by reference herein; and

WHEREAS, Sean and Katlyn McDaniel ("Licensee"), is the legal title holders of the real property located at 520 Aurora Way, Wheaton, Illinois, which property is legally described herein and is contiguous to a portion of the Street; and

WHEREAS, the Licensee desires to use a portion of the Street for a driveway accessing the property from the Street and vehicle parking, as shown on Exhibit A ("Encroachment Area") which is attached hereto and incorporated by reference herein; and

WHEREAS, the Licensee acknowledge that this Agreement is not an easement and does not vest him in any manner with any property rights in or claims to any portion of the Street; and

WHEREAS, the Licensee's successors, heirs, and assigns will benefit from the use of the Street as described herein; and

WHEREAS, the City is willing to permit the Licensee to construct and maintain a driveway encroaching upon that portion of the Street contiguous to the property located at 520 Aurora Way, Wheaton, Illinois, in strict conformance with the terms and conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto agree as follows:

1.) Recitals. The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) Legal Description of Licensee's Property. Sean and Katlyn McDaniel is the Owner of property located at 520 Aurora Way, Wheaton, Illinois, legally described as follows:

LOT 2 IN VONDER HEYDT'S DIVISION OF PART OF BLOCK 8 IN KNOllWOOD, A SUBDIVISION IN THE SOUTHEAST QUARTER OF SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD MERIDIAN, ACCORDING TO THE PLAT OF SAID DIVISION RECORDED JULY 30, 1957 AS DOCUMENT NUMBER 851025, IN DUPAGE COUNTY, ILLINOIS. (HEREINAFTER THE "**PROPERTY**")

PIN: 05-17-330-009

3.) **License to Use Street.** The Licensee, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby granted a license, in strict conformance with the terms of this License Agreement, to construct and maintain a driveway on a portion of the unimproved Street immediately north of the Property as more specifically depicted in Exhibit A.

4.) **No Other Use.** The Licensee shall not otherwise utilize the Encroachment Area in a manner which interferes, impedes, hinders, or otherwise obstructs the lawful use of the Street by the City or public.

5.) **No Interest in Encroachment Area.** The Licensee shall not acquire any right, title, or interest in or to the City's Street as fully described and depicted in Exhibit A or the portion thereof affected by this Agreement. Licensee understands and agrees that the encroachment on the portion of the City's Street described herein is for a permissive use only and is not an easement. It is only a license. The installation/construction of a driveway on the portion of the Street described herein shall not operate to create or vest any property rights in Licensee. If there is any attempt by the Licensee to maintain that the license granted herein is anything other than a license, the Licensee shall reimburse the City for all attorneys' fees and costs associated with its defense of the claim. If this Agreement is interpreted by a court as an easement, it shall be temporary and terminate within twenty-four (24) hours after entry of the court order interpreting it as an easement.

6.) **Maintenance of Encroachment/Fence.** The Licensee shall construct the driveway on that portion of the Street contiguous to the Property in conformance with all applicable City ordinances. Upon completion, and as long as the driveway remains on the Street, Licensee shall maintain the driveway in a good and safe condition and shall make repairs to the driveway when necessary to fully comply with all applicable City ordinances. If the Licensee fail to maintain the driveway as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the driveway. If the City makes such repairs the Licensee shall reimburse the City for its actual costs. If the Licensee fail to reimburse the City for its actual costs within thirty (30) days of the date of the invoice from the City for payment of such costs, the City shall have the right to lien the Property described in paragraph 2 of this Agreement and to foreclose such lien in conformance with State law.

7.) **Access.** The City shall have free and complete access to the Encroachment Area for the purpose of maintaining the existing City utility systems (watermain, storm and sanitary sewers), if any. If the City performs maintenance work on any of the aforesaid utility systems

and removes any part of or all of the driveway installed on the Encroachment Area the Licensee shall reinstall and/or restore the driveway to conform with all applicable City ordinances at the Licensee's sole cost and expense within sixty (60) days after the City provides written notice of the completion of its utility maintenance work. The City shall have no obligation to protect or maintain the portions of the driveway on the Licensee's Property from damage or destruction caused by the City's destruction, demolition, or removal of those portions of the driveway or other items placed in the Encroachment Area and the Licensee hereby waives any and all claims, actions, causes of action, or damages against the City that may arise in the context of the City's exercise of its authority under this section.

8.) **Termination.** The City may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the Licensee in writing at least ninety (90) days prior to termination. In the case of a public emergency as determined by the City Manager, this Agreement may be terminated on twenty-four (24) hour notice. Service of the notice of termination in the case of emergency may be by hand or posted notice on the fence. Upon termination of this Agreement, the City may destroy, demolish, and remove any improvements placed upon the Encroachment Area by the Licensee or any occupant of the Property without any liability whatsoever to the Licensee.

10.) **Indemnification.** To the greatest extent permitted under Illinois law, Licensee 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 attorneys' fees, and expert witness fees) which arise or may be alleged to have arisen out of or in connection with the negligent acts or omissions or willful and wanton conduct of the Licensee, or Licensee's agents, as a result of the design, construction, maintenance, use or abandonment of the driveway described herein or from any activity, work, or act done, permitted, or suffered by Licensee in or about the Encroachment Area, and Licensee shall further indemnify, defend, and hold harmless the City against and from any and all claims or suits arising from any breach or default of any performance of any obligation of Licensee hereunder, and against and from all costs, attorneys' fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

11.) **Entire Agreement.** The provisions set forth in this Agreement and attached exhibits represent the entire Agreement between the parties and shall supersede 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.

12.) **Modification.** 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.

13.) **Joint and Several Obligations.** The Licensee's obligations under this Agreement shall be joint and several.

14.) **Successors and Assigns.** This Agreement shall be binding upon the Licensee their respective heirs, successors and assigns.

15.) **Recording.** This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois, at the expense of the Licensee.

16.) **Applicable Law.** This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the municipal ordinances of the City of Wheaton and the laws of the State of Illinois.

17.) **Waiver.** Any failure of the City to strictly enforce any term, right, or condition of this Agreement, whether implied or express, shall not be construed as a waiver of such term, right, or condition, nor shall it be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

18.) **Severability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

19.) **Notice.** All notices required herein shall be sent via First Class U.S. Mail with postage prepaid thereon to the parties as follows:

To City:

City of Wheaton
Attn: City Clerk
303 W. Wesley Street, Box 727
Wheaton, IL 60187-727

To Licensee:

Sean and Katlyn McDaniel
520 Aurora Way
Wheaton, IL 60187

Notices shall be deemed effectively served upon the deposit in the United States Mail.

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

Philip J. Suer
Mayor, City of Wheaton

Attested by:

Adam Bennett, Jr.
City Clerk

Sean McDaniel
Sean McDaniel

Katlyn McDaniel
Katlyn McDaniel

Attested by:

Rosemary Herbert
Notary

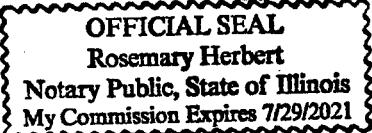
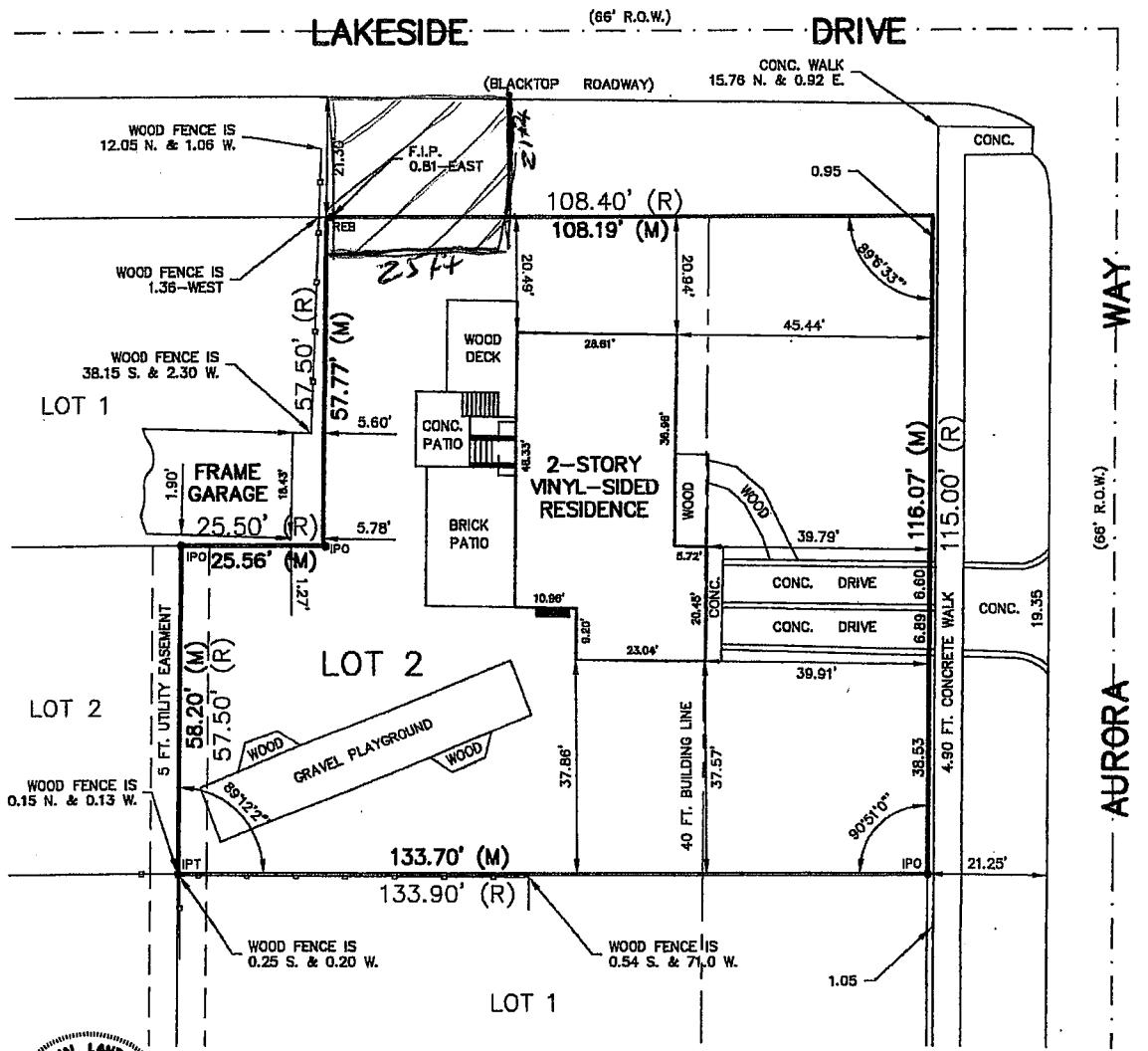


EXHIBIT A

PLAT OF SURVEY

LOT 2 IN VONDERHEYDT'S DIVISION OF PART OF BLOCK 8 IN KNOLLWOOD, A SUBDIVISION IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 39 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID DIVISION RECORDED JULY 30, 1957 AS DOCUMENT 851025, IN DUPAGE COUNTY, ILLINOIS.

ADDRESS: 520 AURORA WAY
PIN: 05-17-330-009
AREA: 0.32 ACRES



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

THIS IS TO CERTIFY THAT I, AN ILLINOIS LAND SURVEYOR, HAVE SURVEYED THE PROPERTY DESCRIBED ABOVE AND THAT THE ANNEXED PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY. FIELD WORK COMPLETION DATE: 05/28/2018.

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS
MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

GIVEN UNDER MY HAND AND SEAL AT WHEATON, ILLINOIS,
THIS 1ST. DAY OF MAY, A.D., 2018.

Robert V. Lombardi
ILLINOIS LAND SURVEYOR NO. 1883; LICENSE EXPIRES 11/30/18
ILLINOIS DESIGN FIRM NO. 184-007280

ILLINOIS DESIGN FIRM NO. 184-007280
REFER TO DEED OF 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
APARENT DISCREPANCIES TO THE SURVEYOR.

ORDERED BY: SCOTT BROMMANN-ATTY. ORDER NO.18 F 28 FILE NO.18-0220

LAND SURVEYING AND CIVIL ENGINEERING

LAND TECHNOLOGY

955 W. LIBERTY DR
WHEATON, IL 60187
P: (630)653-6381
F: (630)653-6398

E: INFO@LAMBERTSURVEY.COM

LAND TECHNOLOGY

3922 W. MAIN STREET
McHENRY, IL 60050
P: (815)363-9200
F: (815)363-9223

E: LANDTECH@LT-PE.COM

● = FOUND IRON STAKE
◎ = SET IRON STAKE