

RESOLUTION R-2020-38

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(106 East Farnham Lane)

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 9th, 2017, between the City of Wheaton and the Karen A Wilson Trust for 106 E Farnham Lane, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 4th day of May 2020.



Philip J. Suess
Mayor

ATTEST:



Shannan Bonett-Hagan
City Clerk

Roll Call Vote

Ayes: Councilman Rutledge
Councilman Zaruba
Councilman Barbier
Councilwoman Bray-Parker
Councilwoman Fitch
Mayor Suess
Councilwoman Robbins

Nays: None

Absent: None

Motion Carried Unanimously

○

24.5.2013

○

○

201702861

Lawn Irrigation System

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT
RIGHT-OF-WAY (106 E FARNHAM Ln)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 9th day of SEPT, 2017, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and KAREN A WILSON TRUST ("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, KAREN A WILSON TRUST (hereinafter "Owner"), the owner of the premises located at 106 E FARNHAM Ln, 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.) KAREN A WILSON TRUST are the owners of property located at 106 E FARNHAM 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 Farnham Ln.

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.

SEP 22 2017

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.

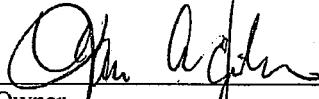
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within 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.

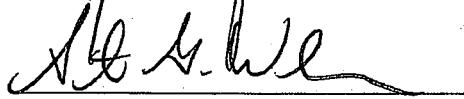
11.) The Owners obligations under this Agreement shall be joint and several.

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.



Owner



Owner

Subscribed and sworn to before me this 20 day of September, 2017.

Kara Schwendeman Notary Public

(Notary Seal)



Attested by:

Philip J. Luers

Mayor, City of Wheaton
Shawn Bennett
City Clerk

EXHIBIT A

Legal Description:

PARCEL 1:
THE NORTH 345.8 FEET OF THAT PART OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE CENTER OF SAID SECTION AND RUNNING THENCE WEST OF THE QUARTER SECTION LINE, 66 FEET TO AN IRON STAKE ON THE WEST LINE OF NAPERVILLE ROAD; THENCE SOUTH 0 DEGREES, 05 MINUTES WEST ALONG SAID WEST LINE, 641.8 FEET TO AN IRON STAKE; THENCE SOUTH 89 DEGREES 37 MINUTES TO THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED TO JOSEPH T. STEPHENS FOR A POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 23 MINUTES EAST ALONG THE WEST LINE OF SAID STEPHENS TRACT 697.4 FEET TO AN IRON ROD IN OLD FENCE LINE OF THE NORTH LINE OF KUHN FARM; THENCE WESTERLY ALONG SAID OLD FENCE LINE, 140.03 FEET TO AN IRON PIPE; THENCE NORTH 0 DEGREES 23 MINUTES WEST, 694.03 FEET TO AN IRON PIPE ON THE NORTH LINE OF A 66 FOOT EASEMENT FOR ROADWAY; THENCE NORTH 89 DEGREES 37 MINUTES EAST ALONG SAID SOUTH LINE, 140.0 FEET TO THE POINT OF BEGINNING, SAID TRACT BEING A PART OF LOT C IN COUNTRY CLUB ADDITION TO WHEATON, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 19, 1921 AS DOCUMENT 146511 (EXCEPT THEREFROM THE EAST 40 FEET) IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2:
THAT PART OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED BY COMMENCING AT THE CENTER OF SAID SECTION AND RUNNING THENCE WEST OF THE QUARTER SECTION LINE, 66 FEET TO AN IRON STAKE ON THE WEST LINE OF NAPERVILLE ROAD; THENCE SOUTH 0 DEGREES 05 MINUTES WEST ALONG SAID WEST LINE, 641.8 FEET TO AN IRON STAKE; THENCE SOUTH 89 DEGREES 37 MINUTES WEST ALONG THE SOUTH LINE OF A 66 FOOT EASEMENT FOR ROADWAY, 1215.1 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED TO JOSEPH T. STEPHENS FOR A POINT OF BEGINNING; THENCE SOUTH 0 DEGREES 23 MINUTES EAST ALONG THE WEST LINE OF SAID STEPHENS TRACT 697.4 FEET TO AN IRON ROD IN OLD FENCE LINE OF THE NORTH LINE OF THE KUHN FARM; THENCE WESTERLY ALONG SAID OLD FENCE LINE, 140.03 FEET TO AN IRON PIPE; THENCE SOUTH 0 DEGREES 23 MINUTES WEST ALONG SAID SOUTH LINE, 140.0 FEET TO THE POINT OF BEGINNING, SAID TRACT BEING A PART OF LOT C IN COUNTRY CLUB ADDITION TO WHEATON, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 19, 1921 AS DOCUMENT 146511 (EXCEPT THEREFROM THE EAST 40 FEET) ALSO (EXCEPT THE NORTH 345.8 FEET THEREOF) IN DUPAGE COUNTY, ILLINOIS.

106 E. Farnham Ln. Wheaton, IL 60187

address

P.I.N. 0521303004, 0521303005

TOPOGRAPHICAL SITE DEVELOPMENT & TREE PRESERVATION PLAN

EXHIBIT B

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