

RESOLUTION R-2020-77

A RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT
(1220 W. Thomas Road)

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 August 25th, 2020, between the City of Wheaton and Eric and Mary Cann for 1220 W. Thomas Road, Wheaton, Illinois, attached hereto as Exhibit 1.

ADOPTED this 21st day of September 2020.



Philip J. Suess
Mayor

ATTEST:



Alan Bennett
City Clerk

Roll Call Vote

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

Nays: None
Absent: None

Motion Carried Unanimously

○

○

○

CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT

RIGHT-OF-WAY (W. Thomas Rd.)

Street Name

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 25 day of August, 2020, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and Eric and Mary Cann ("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, Eric and Mary Cann (hereinafter "Owner"), the owner of the premises located at 1220 W. Thomas Rd., 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.) Eric and Mary Cann are the owners of property located at 1220 W. Thomas Rd., 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 only that portion of the right-of-way specifically depicted and identified on Exhibit B which is attached hereto and incorporated herein as fully set forth as for construction, maintenance and use of a lawn irrigation system conforming to all applicable ordinances of the City and this Agreement. The 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 the 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.

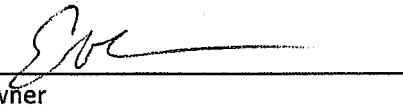
9.) The provisions set forth in this Agreement and exhibit represent the entire Agreement between the parties and shall precede all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within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



Owner

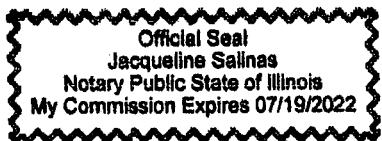


Owner

Subscribed and sworn to before me this 25th day of August, 2020

Jacqueline Salinas Notary Public

(Notary Seal)





Jacqueline Salinas
Notary Public

Attested by:

Shawn Bennett-Hughes
City Clerk



Philip J. Breen
Mayor, City of Wheaton

EXHIBIT A

Legal Description:

Lot 7 in Woodlawn Place, Being a Subdivision of
Part of lot 1 in Muchlfelt Land Partnership Assessment
Plat, Being Part of the Northwest Quarter
of Section 8, Township 39 North, Range 10 East
of the Third Principal Meridian, According to
the Plat Thereof Recorded May 19, 2015
As Document R 2015-052811, In DuPage County IL

120 W. Thomas Rd. Wheaton, IL 60187
Street Name

P.I.N. 05-08-118-010



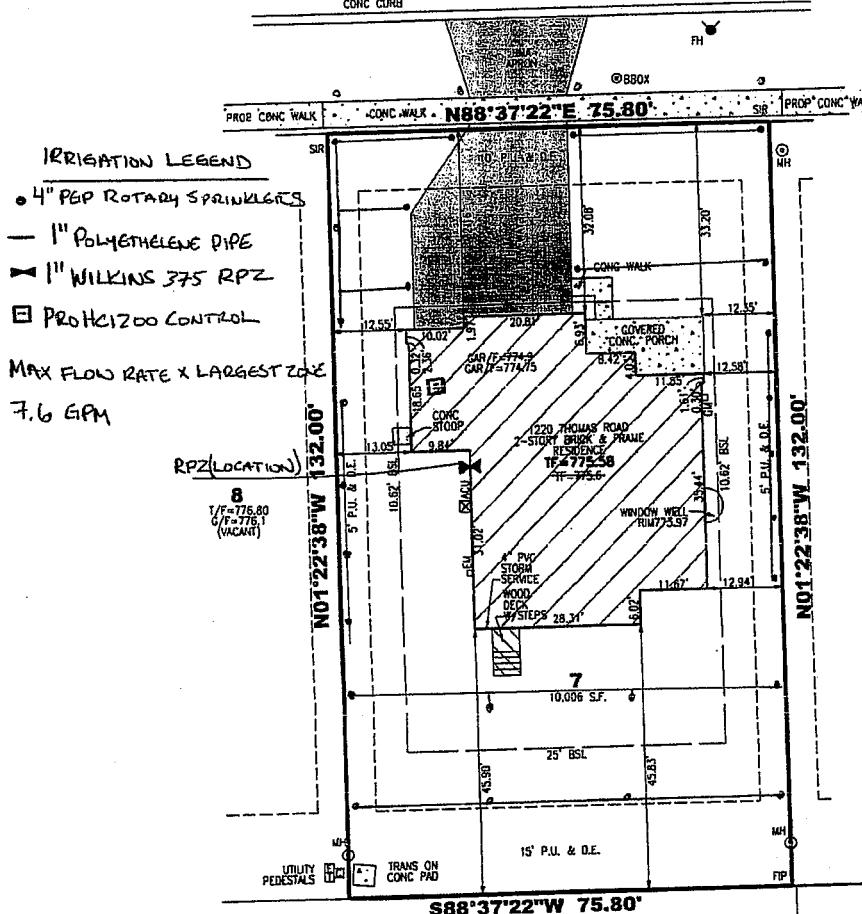
PLAT OF SURVEY

"CLOSING SURVEY"

LOT 7, IN WOODLAWN PLACE, BEING A SUBDIVISION OF PART OF LOT 1, IN MUEHLFELD LAND PARTNERSHIP ASSESSMENT PLAT, BEING PART OF THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MAY 19, 2015, AS DOCUMENT R2015-052811, IN DUPAGE COUNTY, ILLINOIS.

THOMAS ROAD

EXHIBIT B



LEGEND

BSL	BUILDING SETBACK LINE
DR	DRAINAGE EASEMENT
UE	UTILITY EASEMENT
ACU	AIR CONDITIONER UNIT
BB	BUFFALO BOX
CO	CLEAN-OUT
EM	ELECTRIC METER
GA	GAS METER
CONC	CONCRETE
FR	FOUNDATION ROD
FC	FENCE CORNER
PEDC	CABLE PEDESTAL
PEDE	ELECTRIC PEDESTAL
HMA	MOX MIX ASPHALT
SIR	SET IRON ROD
SL	STREET LIGHT
TDC	TOP OF DEPRESSED CURB
TC	TOP OF CURB
TF	TOP OF FOUNDATION
PU	PUBLIC UTILITY
D.E.	DRAINAGE EASEMENT
SPR	FOUND. IRON PIPE

SURVEYOR'S NOTES:
1. THIS SURVEY IS SUBJECT TO MATTERS OF TITLE WHICH MAY
BE REVEALED BY A CURRENT TITLE REPORT.
2. BUILDING DIMENSIONS AND TIES SHOWN HEREON ARE
MEASURED FROM THE OUTSIDE FACE OF CONCRETE FOUNDATION.
3. SURVEY IS BASED ON FIELD WORK COMPLETED ON 06-07-

GENERAL NOTES:
1. ALL DIMENSIONS ARE GIVEN IN FEET AND DECIMAL PARTS
THEREOF.
2. ONLY THOSE BUILDING LINE SETBACKS AND EASEMENTS WHICH
ARE SHOWN ON THE RECORDED PLAT OF SUBDIVISIONS ARE
SHOWN HERE ON. REFER TO THE DEED, TITLE INSURANCE POLICY
AND LOCAL ORDINANCES FOR OTHER RESTRICTIONS.

3. "COMPARE DEED DESCRIPTION AND SITE CONDITIONS WITH THE DATA GIVEN ON THIS PLAT AND REPORT AND DISCREPANCIES TO THE SURVEYOR AT ONCE.
4. NO DIMENSIONS SHALL BE DERIVED FROM SCALE MEASUREMENTS.
5. CERTIFIED COPIES OF THIS SURVEY BEAR AN IMPRESSED SEAL.

© 2011 Pearson Education, Inc. All Rights Reserved.

**COUNTY CLERK'S DIVISION OF
P. BUTTLE EDGE FARM**

DEVELOPER
M/I HOMES
400 EAST DIEHL ROAD, SUITE 230
NAPERVILLE, ILLINOIS 60563
P: 630-577-5200 F: 630-577-5220
SETBACKS:

FRONT YARD MINIMUM = 30.0',
SIDE YARD MINIMUM = VARIES
CORNER SIDE YARD MINIMUM = 12.0'
REAR YARD MINIMUM = 25.0'

SOURCE BENCHMARK:

DUPAGE COUNTY BENCHMARK #M10001:
DISK SET IN WEST SIDE OF CONCRETE TRAFFIC SIGNAL
BASE, LOCATED IN THE SOUTHEAST CORNER OF GENEVA
ROAD AND PRESIDENT STREET.
ELEVATION = 770.40 (NAVD 1988).

SITE BENCHMARK:

NORTHWEST ARROW BOLT OF HYDRANT LOCATED IN
EAST RIGHT OF WAY OF WOODLAWN AVENUE WHERE IT
DEAD ENDS, APPROXIMATELY 356 FEET EAST OF THE
NORTHWEST CORNER OF SITE.
ELEVATION = 773.00

STATE OF ILLINOIS }
COUNTY OF COOK }
SS

WE, MACKIE CONSULTANTS LLC, AN ILLINOIS PROFESSIONAL DESIGN FIRM NO. 184-002694, HEREBY CERTIFY THAT WE HAVE SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THIS PLAT REPRESENTS THE CONDITIONS FOUND AT THE TIME OF SAID SURVEY.

GIVEN UNDER MY HAND AND SEAL THIS 13th DAY OF
Tunc

JUNE, 2016 IN

Russell P. Ory
RUSSELL P. ORY
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 045-002753
LICENCE EXPIRES: NOVEMBER 30, 2016



**WOODLAWN PLACE
1220 THOMAS ROAD
WHEATON, ILLINOIS**



Mackie Consultants, LLC
9575 W. Higgins Road, Suite 500
Rosemont, IL 60018
(847)696-1400
www.mackieconsult.com

DATE	DESCRIPTION	BY
03-01-16	FOUNDATION LOCATION	XMF
06-13-16	FINAL RECORD SURVEY	SMC
06-13-16	CLOSING SURVEY	RPO

**WOODLAWN PLACE
1220 THOMAS ROAD
WHEATON, ILLINOIS**

DATE: 12-10-15 DR BY: SMC PROJ NO: 2638 LOT NO: 7

